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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. BANK NATIONAL  
ASSOCIATION,

Interpleader Plaintiff,

v.

18 CV 04044 (BCM)

TRIAXX ASSET MANAGEMENT, LLC,  
et al.,

Bench Trial

Interpleader Defendants.

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New York, N.Y.  
April 19, 2023  
9:30 a.m.

Before:

HON. BARBARA C. MOSES,

U.S. Magistrate Judge

APPEARANCES

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BY: RANDALL RAINER

Also Present:

JASON BERLAND, One Zero Capital

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(In open court; trial resumed; case called)

THE DEPUTY CLERK: Counsel, please make your appearances for the record.

MR. LORENZO: Good morning, your Honor. Alex Lorenzo, from Alston & Bird, for U.S. Bank National Association. Again, I'm joined today by my colleague, Ms. Buckel.

THE COURT: Mr. Lorenzo and Ms. Buckel, good morning.

MR. SAVLA: Your Honor, Sundeep Savla, of Norton Rose Fulbright US LLP, for PIMCO. I'm joined by my colleague, Anthony Lauriello. I'm also joined by Davis Polk team, for Citi, consisting of Adam Greene and Isaac Gelbfish.

THE COURT: Mr. Savla, Mr. Lauriello, Mr. Greene, and Mr. Gelbfish today.

MS. BEAUMONT: Good morning, your Honor. Anne Beaumont, from Friedman Kaplan Seiler & Adelman, for Triaxx Asset Management, LLC, and Phoenix Real Estate Solutions Ltd. And with me are my colleagues, Pryanka Wityk and Anil Vassanji.

THE COURT: Ms. Beaumont, Ms. Wityk, and Mr. Vassanji.

MR. RAINER: Good morning, your Honor. Randall Rainer, from Wollmuth Maher & Deutsch, for Triaxx Prime CDOs.

THE COURT: Mr. Rainer.

And we excused Ms. Bandler yesterday, so we are not expecting her here today.

Ms. Beaumont, is your witness ready?

MS. BEAUMONT: Yes.

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Garg - Direct

1 VISHAL GARG,

2 called as a witness by the Defendants,

3 having been duly sworn, testified as follows:

4 THE WITNESS: Vishal Garg, V-i-s-h-a-l, Garg, G-a-r-g.

5 THE COURT: Ms. Beaumont, you may proceed.

6 MS. BEAUMONT: May I approach the witness with the  
7 declaration?

8 THE COURT: You may.

9 VISHAL GARG,

10 DIRECT EXAMINATION

11 BY MS. BEAUMONT:

12 Q. Good morning, Mr. Garg. I just have given you a document  
13 titled "Trial Declaration of Vishal Garg."

14 Do you have that?

15 A. I do. Thank you.

16 Q. Is that your direct testimony in this case?

17 A. It is.

18 Q. And are there any clarifications or corrections you'd like  
19 to make to that?

20 A. I want to clarify that there was a mistake in here in that  
21 there is a calculation of due diligence fees, and the due  
22 diligence fees have a mistake in that the amounts are off  
23 because, in our calculation, we assumed they're the same across  
24 all three CDOs when, actually, they're different across the  
25 three different CDOs.

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Garg - Direct

1 Q. And that's the material in paragraph 27 of the declaration?

2 A. Yes, ma'am.

3 MS. BEAUMONT: We would move the admission of  
4 Mr. Garg's direct testimony in this case.

5 THE COURT: Hold on one second.

6 (Pause)

7 THE COURT: If you wish, before cross-examination, you  
8 may elicit from the witness what his corrected testimony would  
9 be with respect to paragraph 27.

10 MS. BEAUMONT: Thank you, Judge.

11 BY MS. BEAUMONT:

12 Q. Mr. Garg, in paragraph 27, you state, "In addition, PRES  
13 was to receive a monthly diligence fee for each of the three  
14 Triaxx CDOs, the amount of which started at \$50,000 per month  
15 and declined to \$25,000 per month."

16 Is that correct as to all three CDOs?

17 A. - and I'm trying to remember. I think for one of the CDOs,  
18 it was \$40,000, and it declined to \$20,000, and another one, it  
19 was \$30,000 and it declined to \$15,000.

20 Q. And the exact information is set forth in the engagement  
21 letters?

22 A. That's correct.

23 THE COURT: Is that the extent of the clarification?

24 MS. BEAUMONT: It is.

25 THE COURT: All right. Thank you very much.

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Garg - Cross

1 Cross-examination?

2 MR. SAVLA: Your Honor, if I may approach with the two  
3 binders?

4 THE COURT: You may approach.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 Mr. Savla, you may proceed.

8 MR. SAVLA: Thank you.

9 CROSS-EXAMINATION

10 BY MR. SAVLA:

11 Q. Mr. Garg, I'm Sandeep Savla, and I represent PIMCO, and I  
12 am going to have some questions for you. I'd like to start  
13 with the lead-up to the engagement letters.

14 It's fair to say that you saw a business opportunity  
15 in residential mortgage-backed securities in 2010, correct?

16 A. That would be fair to say.

17 Q. You created Phoenix Real Estate Solutions to seize on that  
18 opportunity?

19 A. That's correct.

20 Q. And you're familiar with an entity called Phoenix Real  
21 Estate Solutions, correct?

22 A. I am familiar.

23 Q. I'm going to refer to Phoenix Real Estate Solutions as  
24 Phoenix or Phoenix RES.

25 Is that okay with you?

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Garg - Cross

1 A. I would prefer if you refer to it as PRES, if that's okay,  
2 because there are so many Phoenix entities.

3 Q. Very well. PRES, it is.

4 And you were a director and officer of PRES, correct?

5 A. That's correct.

6 Q. And Mr. Visweswaran was also a director and officer of  
7 PRES, correct?

8 A. That's correct.

9 Q. Mr. Visweswaran's job was more to help manage the  
10 administrative side of things at PRES, correct?

11 A. Sure.

12 Q. And PRES is owned by a company called Phoenix Holdco L.P.,  
13 correct?

14 A. That's correct.

15 Q. And you were a limited partner in Phoenix Holdco L.P.?

16 A. That's correct.

17 Q. I'd like to show you what's already been admitted in  
18 evidence as Exhibit 2059, which you will see in tab 3 of your  
19 binder. If you go to the second page of that, it's got the  
20 Bates stamp ending in 445.

21 Just let me know when you're there.

22 A. I'm there.

23 Q. If we look at the middle column or the second column, that  
24 shows the Phoenix RES parent companies, correct?

25 A. That is correct.

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Garg - Cross

1 Q. There's Phoenix Holdco, which owns a hundred percent of  
2 Phoenix RES, correct?

3 A. That is correct.

4 Q. And then you were an 11 percent limited partner of Phoenix  
5 Holdco?

6 A. That's correct.

7 Q. And then Phoenix Cayman Ltd. is the general partner?

8 A. That's correct.

9 Q. And then Asian Castle, in turn, owns Phoenix Cayman Ltd.?

10 A. That's correct.

11 Q. And you were one of four shareholders in Asian Castle Ltd.,  
12 correct?

13 A. That's correct.

14 Q. Mr. Visweswaran is also a shareholder in Asian Castle,  
15 correct?

16 A. That's correct.

17 Q. I'd like to show you another document, and this is Trial  
18 Exhibit 2041, which is already admitted in evidence. It's  
19 tab 4 of your binder.

20 A. Yep.

21 Q. And this is an email. If we go to the second email in the  
22 chain, which is up on your screen, it's from you to Mr. Lehman,  
23 Mr. Visweswaran, Mr. Greg Smith, and Mike Balboa, correct?

24 A. That's what it states, yes.

25 Q. And at this time, Mr. Visweswaran was one of the principals



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Garg - Cross

1 at ARAM Global, correct?

2 A. Yes.

3 Q. Mr. Balboa was the other principal at ARAM Global?

4 A. Yes.

5 Q. And you were a business partner to Mr. Balboa and  
6 Mr. Visweswaran?

7 A. That's correct.

8 Q. And you were at ARAM ABS?

9 A. Yes.

10 Q. And you owned 25 percent of ARAM ABS, correct?

11 A. That's correct.

12 Q. And ARAM Global owned 50 percent of ARAM ABS, correct?

13 A. That's correct.

14 Q. Now, I'll direct you to some language in the email. It  
15 begins, "I have read the full offering memo and the indenture,"  
16 and the re line of the email is "Triaxx." It goes on to say,  
17 "I am now familiar with the ins and outs of events of default,  
18 removal of collateral manager, et cetera, et cetera."

19 Have I read that right?

20 A. That's correct.

21 Q. And so is it fair to say that as of April 2010, that you  
22 had read the offering memo?

23 A. Yes.

24 Q. You had read the indenture?

25 A. Yes.

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Garg - Cross

1 Q. And one of the things you were looking at is potential  
2 removal of the collateral manager, correct?

3 A. That's correct.

4 Q. And the collateral manager at the time was ICP?

5 A. That's correct.

6 Q. The email goes on to say, "I think we could do many things  
7 (some of which sound counterintuitive, but would be very  
8 effective) if we took over the ICP vehicle, which is the  
9 collateral manager."

10 Correct?

11 A. That's correct.

12 Q. So one of the things you were looking at in April of 2010  
13 is taking over the ICP collateral manager, correct?

14 A. We were looking at potentially purchasing ICP.

15 Q. If we go to the paragraph that begins, "The fee is 5bps per  
16 annum" -- am I right that that's basis points?

17 A. Five basis points, yes.

18 Q. Five basis points per annum.

19 -- "which, on 9 billion of Triaxx, is still  
20 4.5 million per year."

21 Have I read that right?

22 A. That's correct.

23 Q. One of the things you were looking at in April 2010 was the  
24 amount of fees you could obtain by acquiring the collateral  
25 manager, correct?

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Garg - Cross

1 A. No, that's not correct.

2 Q. Is it fair to say that as of April 2010, you were looking  
3 into ICP's fees?

4 A. We were looking into the revenue streams that ICP was  
5 earning.

6 Q. Then you go on to say in the email, "And that's before we  
7 start active management," correct?

8 A. That's correct.

9 Q. So, again, is it fair to say that one of the things you  
10 were looking at in April 2010 is active management of ICP?

11 A. We weren't looking at active management of ICP. We were  
12 looking at a potential to actively manage the positions in the  
13 CDOs.

14 Q. So now -- and you can stop looking at this document now.

15 So you were introduced to ICP in 2010, correct?

16 A. That's, yeah, about right.

17 Q. When I say ICP, you understand me to refer to ICP Asset  
18 Management, correct?

19 A. ICP Asset Management as well as the broader ICP group.

20 Q. And your first conversations in 2010 with ICP were with one  
21 of Thomas Priore's deputies, correct?

22 A. Yes. It was with Carlos Mendez.

23 Q. Those conversations with Mr. Mendez did not go anywhere?

24 A. No, they didn't go anywhere.

25 Q. But then later you heard talk in the market that ICP wanted

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Garg - Cross

1 to sell itself?

2 A. I read an article in Bloomberg or the Wall Street Journal  
3 that ICP was for sale.

4 Q. When you learned that ICP was for sale, you asked  
5 Mr. Lehman and ARAM to engage with ICP?

6 A. I asked him to reintroduce us, yes.

7 Q. And then you started negotiating with Mr. Priore, correct?

8 A. Yes.

9 Q. Now let's go to another document. This is Exhibit 2109,  
10 which is in evidence, and it's tab 5 in your binder.

11 A. I'm sorry, which tab is it in?

12 Q. Tab 5.

13 A. Yes.

14 Q. Now, is it fair to say that as of 2010, Mr. Jonsson is  
15 evaluating the potential acquisition of ICP?

16 A. Yes. Mr. Jonsson was asked to look at whether it made  
17 sense or not.

18 Q. And Mr. Jonsson, we see here, emails you at the top of the  
19 email, and he says, "I forgot to include this file in the last  
20 email. Here you can find the key points of the collateral  
21 manager agreement bookmarked and highlighted," correct?

22 A. That's correct.

23 Q. So, is it fair to say that in August of 2010, one of the  
24 things you're looking at is the collateral management  
25 agreement?

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Garg - Cross

1 A. Yes.

2 Q. If we go to the next tab, tab 8 -- I'm sorry, tab 5, which  
3 is Exhibit 2109, already in evidence, and if you turn to  
4 page 12 of the document, the one that is Bates stamped  
5 KHAN 18160 --

6 THE COURT: I think you are on 2110 now, tab 6?

7 MR. SAVLA: Yes. Thank you, your Honor.

8 BY MR. SAVLA:

9 Q. So now, this is section --

10 THE COURT: 2110 is in evidence?

11 MR. SAVLA: It is in evidence, yes.

12 Q. This is section 8(b) of the collateral management agreement  
13 that Mr. Jonsson highlighted, correct?

14 A. Yes.

15 Q. So one of the things -- and this section 8(b) deals with  
16 the compensation of the collateral manager, correct?

17 A. Uh-huh.

18 Q. So fair to say that in August 2010, one of the things  
19 you're looking at is the compensation of the collateral manager  
20 under the collateral management agreement?

21 A. Yes, we were looking at that.

22 Q. And one of the provisions you were looking at is  
23 section 8(b) of the collateral management agreement, correct?

24 A. That's correct.

25 Q. I'm going to show you another document, and this is

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Garg - Cross

1 Exhibit 2030, which is tab 7, and that is objected to.

2 This is a letter of intent to acquire ICP, correct?

3 A. That's correct.

4 Q. And if we go to the second page, this is signed by you,  
5 correct?

6 A. That's correct.

7 MR. SAVLA: Your Honor, we move to admit Exhibit 2030  
8 into evidence.

9 THE COURT: Any objection?

10 Exhibit 2030 is admitted.

11 (Trial Exhibit 2030 received in evidence)

12 BY MR. SAVLA:

13 Q. So, as of September 2010, is it fair to say that ARAM was  
14 looking to acquire ICP Asset Management?

15 A. Yes, we were considering it.

16 Q. And this letter of intent was part of a due diligence  
17 phase, correct?

18 A. The letter of intent was meant to help us enter due  
19 diligence.

20 Q. ARAM's purchase of ICP did not go forward, correct?

21 A. That's correct.

22 Q. And you were involved in that decision not to go forward  
23 with the planned acquisition?

24 A. I was involved, yes.

25 Q. In 2010, ICP was subject to an SEC investigation, correct?

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Garg - Cross

1 A. Yes, I think it was 2010.

2 Q. And it's likely that ARAM chose not to acquire ICP because  
3 of the SEC investigation, correct?

4 A. That is correct.

5 Q. And that's because ARAM didn't want to take on ICP's  
6 liabilities?

7 A. That's partially correct.

8 Q. But the transaction took a different form later on,  
9 correct?

10 A. It was a different transaction.

11 Q. So let's discuss one of the transaction documents.

12 This is Exhibit 12, which is in evidence, which is  
13 tab 8 of your binder.

14 A. Uh-huh.

15 Q. This is a document that we are alternately calling the  
16 engagement letters or the engagement agreements.

17 So will you understand what I mean when I refer to  
18 those phrases?

19 A. No. Which documents are you --

20 Q. So I'm referring to Exhibit 12.

21 A. In my binder, on Exhibit 12, it says, the option to  
22 purchase agreement.

23 Q. In tab 8?

24 A. Oh, sorry, tab 8?

25 Yes, tab 8, that's the engagement agreement.

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Garg - Cross

1 Q. This is in evidence.

2 THE COURT: You have all three of them in here,  
3 Mr. Savla?

4 MR. SAVLA: I believe we only have the 2007 one, but  
5 I'll represent they are all materially identical.

6 THE COURT: Thank you.

7 BY MR. SAVLA:

8 Q. So this is the collateral manager's agreement with ARAM  
9 Phoenix, correct?

10 A. I believe it's the CDOs' agreement with ARAM Phoenix.

11 Q. If we go to page 9, the document with the Bates stamp 183,  
12 it's signed by you, correct?

13 A. That's correct.

14 Q. If you go to the next page, it's countersigned by  
15 Mr. Priore?

16 A. That's correct.

17 Q. And you represented PRES in the negotiation of these  
18 engagement letters, correct?

19 A. That's correct.

20 Q. Mr. Visweswaran was also involved, to a lesser degree?

21 A. That's correct.

22 Q. And various people at ARAM Global may also have reviewed  
23 the engagement letters, correct?

24 A. It was a long time ago, but I assume so, yes.

25 Q. And Mr. Priore was on the other side of the negotiations,



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Garg - Cross

1 correct?

2 A. That's correct.

3 Q. And PRES had counsel in connection with the negotiation of  
4 these engagement letters?

5 A. Yes; Kramer Levin.

6 Q. And ICP also had counsel, correct?

7 A. Yes; Schulte Roth.

8 Q. You signed the engagement letter on behalf of Phoenix?

9 A. That's correct.

10 Q. Or, rather, PRES?

11 A. Good catch.

12 Q. So now, if we go to the engagement letter, at page 8 -- and  
13 that's the Bates stamp ending 4182 -- if you look at  
14 paragraph 19, romanette i, it says, "This agreement constitutes  
15 the entire agreement and understanding among the parties hereto  
16 and supersedes any and all prior agreements and understandings,  
17 oral or written, relating to the subject matter hereof."

18 Do you see that?

19 A. Yes.

20 Q. And you were aware of this provision when you signed the  
21 engagement letter, correct?

22 A. I don't remember this provision directly, but I must have  
23 been.

24 Q. I want to talk to you about some other contracts that were  
25 entered into on the same day. The day we're talking about is

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Garg - Cross

1 March 22nd, 2011.

2 Now, through an affiliate of Phoenix, you bought ICP  
3 Asset Management's economic interest in the Triaxx CDOs,  
4 correct?

5 A. I'm sorry, could you repeat the question?

6 Q. Through an affiliate of PRES, you bought ICP's economic  
7 interest in the Triaxx CDOs?

8 A. By economic interest, do you mean the residuals?

9 Q. Well, let's look at the actual agreements. That's  
10 Exhibit 2034 and 2035. And let's start with 2034, which is  
11 tab 10 of your binder, and that's in evidence.

12 So this is the sale and repurchase agreement, correct?

13 A. Yes.

14 Q. And it's between ARAM Phoenix Investments Ltd. and  
15 Institutional Credit Partners LLC, correct?

16 A. That's correct.

17 Q. And ARAM Phoenix Investments Ltd. is a subsidiary of  
18 Phoenix Holdco L.P., correct?

19 A. That's correct.

20 Q. ARAM Phoenix Investments Ltd. is an affiliate of PRES,  
21 correct?

22 A. That's correct.

23 Q. If we go to page 8 of the exhibit, the Bates ending 682,  
24 that is your signature, correct?

25 A. Yes, that is.

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Garg - Cross

1 Q. If we go to the next page, that is Mr. Priore's signature,  
2 correct?

3 A. That's correct.

4 Q. Let's go to the next document, which is Exhibit 2035.

5 THE COURT: Tab?

6 MR. SAVLA: I'm sorry, tab 11. And this is also in  
7 evidence.

8 BY MR. SAVLA:

9 Q. This is basically the same agreement as the one we saw  
10 before in Exhibit 2034, the only difference being that this is  
11 for the 2007-1 CDO, correct?

12 A. Yes, that's correct.

13 Q. Let's look at the first page, and paragraph 4 on the first  
14 page, which is the Bates ending 685.

15 This refers to fee entitlements, correct?

16 A. That's correct.

17 Q. And it refers to the seller's right, title, and interest to  
18 and under the fee entitlements and rights relating thereto,  
19 correct?

20 A. Yes.

21 Q. So this agreement is a purchase agreement for ICP's fee  
22 entitlements, correct?

23 A. That's correct.

24 Q. Between these two agreements we've looked at, the  
25 Exhibit 2034 and 2035, ARAM Phoenix Investments paid

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Garg - Cross

1 \$4.5 million for ICP's fee entitlements, correct?

2 A. That's correct.

3 Q. If we look at page 7 of Exhibit 2035, the agreement is  
4 signed by you, correct, on behalf of ARAM Phoenix Investments?

5 A. Yes.

6 Q. If we go to the page before, it's -- actually, the page  
7 after, it's signed by Thomas Priore, correct?

8 A. Yes.

9 Q. These two repurchase agreements, they're signed on the same  
10 day as the engagement agreements, correct?

11 A. Yes.

12 Q. Did you have counsel for these repurchase agreements?

13 A. Yes.

14 Q. And the counsel was Kramer Levin for Phoenix?

15 A. Yes.

16 Q. Phoenix Investments?

17 A. Yes.

18 Q. And it was Schulte Roth for ICP, correct?

19 A. I think so, yes.

20 Q. Let's go to another document. This is Exhibit 2029.

21 A. Yep.

22 Which tab is that?

23 Q. I'm actually trying to find that myself.

24 THE COURT: Tab 12.

25 MR. SAVLA: Thank you, your Honor.

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Garg - Cross

1 THE WITNESS: Thank you.

2 THE COURT: And this is in evidence?

3 MR. SAVLA: This is in evidence.

4 BY MR. SAVLA:

5 Q. So this is an option to purchase agreement, correct?

6 A. Yes.

7 Q. And it's entered into between ICP Institutional Credit  
8 Partners LLC and ARAM Phoenix Investments Ltd.?

9 A. That's correct.

10 Q. If we go to page 4, it's signed by Thomas Priore, correct?

11 A. That's correct.

12 Q. If we go to the next page, it's signed by you, correct?

13 A. That's correct.

14 Q. If we go back to the first page, with the Bates ending in  
15 418, and we look at paragraph 1(b), the purchase price under  
16 this agreement is one dollar, correct?

17 A. That's correct.

18 Q. So it's accurate to say that this option agreement gives  
19 ARAM Phoenix Investments Ltd. the option to buy ICP for one  
20 dollar, correct?

21 A. No, that's not correct.

22 Q. Well, let's just look at the agreement.

23 The next paragraph says, "ICPAM rights," correct?

24 A. Uh-huh.

25 Q. It means all of seller's rights to direct the day-to-day

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Garg - Cross

1 management of ICPAM by seller, correct?

2 A. Yes.

3 Q. So is that what's being bought under this option agreement?

4 A. It's the -- what's being bought is the right to manage  
5 ICPAM. What's not being bought is ICPAM itself.

6 Q. So it's the option to manage ICPAM, correct?

7 A. That's correct.

8 Q. Now let's look at your deposition testimony. Actually,  
9 strike that.

10 This option to purchase was negotiated by Kramer  
11 Levin, correct?

12 A. That's correct.

13 Q. Kramer Levin for Phoenix Investments?

14 A. That's correct.

15 Q. And Schulte Roth for ICP?

16 A. I believe so.

17 Q. And this option agreement was also signed on March 22nd,  
18 2011, correct?

19 A. That's correct.

20 Q. And it's signed the same day as the engagement agreements,  
21 correct?

22 A. Yes.

23 Q. If you look at the whereas clause, the second one, it says,  
24 "Whereas seller wishes to sell and purchaser wishes to have the  
25 option to purchase the ICPAM rights," correct?

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Garg - Cross

1 A. Yeah, that's what it says.

2 Q. So this is an option to purchase ICPAM rights?

3 A. That's correct.

4 Q. Now we're going to look at another document, another  
5 agreement. This is Exhibit 2033, which is tab 13.

6 If we look at this agreement – this is not in evidence  
7 yet – this is an agreement as of March 22nd, 2011, between PSD  
8 Partners Ltd., ARAM Phoenix Holdco L.P., and ARAM Phoenix  
9 Investments Ltd. and ARAM Phoenix Real Estate Solutions Ltd.,  
10 correct?

11 A. That's correct.

12 Q. Let's go to page 11.

13 So you're signing on behalf of the various Phoenix  
14 entities, correct?

15 A. Yes.

16 MR. SAVLA: Your Honor, we move to admit this into  
17 evidence.

18 THE COURT: Any objection?

19 Exhibit 2033 is admitted.

20 (Trial Exhibit 2033 received in evidence)

21 BY MR. SAVLA:

22 Q. So this is an agreement with an entity called PSD Partners,  
23 correct?

24 A. Yes.

25 Q. And it's entered into on March 22nd, 2011?

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Garg - Cross

1 A. Yes.

2 Q. The same day as the engagement agreements, correct?

3 A. Yes.

4 Q. On page 12, if we turn to that, it's signed by Lori Priore,  
5 correct?

6 A. Yes.

7 Q. Lori Priore is Thomas Priore's wife, correct?

8 A. I believe so.

9 Q. And this agreement is to hire PSD Partners Consulting  
10 Services, correct?

11 A. Correct.

12 Q. And Mr. Priore was also involved with PSD Partners,  
13 correct?

14 A. Yes.

15 Q. He was a member of PSD Partners, correct?

16 A. I believe so.

17 Q. Let's go to the bottom of page 2. If we look at  
18 paragraph 4, it says, "For its services hereunder, provider  
19 shall be entitled to 25 percent of the net cash flow generated  
20 by the targeted securities acquired by Investco," correct?

21 A. Yes, that's what it says.

22 Q. "And from third-party advisory contracts entered into  
23 Opco"?

24 A. That's correct.

25 Q. Would it be fair to say that under paragraph 4, PSD



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Garg - Cross

1 Partners is entitled to 25 percent of the net cash flow  
2 generated by the targeted securities acquired by ARAM Phoenix  
3 Investments Ltd.?

4 A. Yes, subject to all of the initial investment capital  
5 having been paid back, which is, I think, set forth later on.

6 Q. So PSD Partners received payments pursuant to this  
7 agreement, correct?

8 A. They did.

9 Q. ARAM Phoenix Investments was the entity that generally made  
10 these payments to PSD Partners?

11 A. That's correct.

12 Q. PSD Partners was paid several million dollars under this  
13 agreement, correct?

14 A. Yes.

15 Q. And the PSD -- this agreement we're looking at was  
16 negotiated by Kramer Levin for the Phoenix entities?

17 A. I believe so.

18 Q. And Schulte Roth represented PSD Partners, correct?

19 A. I don't know.

20 Q. Let's look at your deposition testimony. I'm going to  
21 refer you to page 115.

22 THE COURT: Do we have a paper copy of the deposition?

23 MR. SAVLA: It's in tab 1.

24 THE COURT: Thank you.

25 THE WITNESS: What page number?

N4JKUSB1

Garg - Cross

1 BY MR. SAVLA:

2 Q. We're looking at page 115, 2 to 7.

3 You see there, we're discussing the agreement, the PSD  
4 agreement.

5 And then I'm going to refer you to page 122 --

6 A. Uh-huh.

7 Q. -- at lines 9 to 12.

8 (Video playback as follows:)

9 "Q. Was this agreement also negotiated using Kramer Levin on  
10 one hand and Schulte on the other hand?

11 "A. Yes."

12 Q. Does that refresh your recollection as to whether Schulte  
13 represented PSD Partners?

14 A. Yes, I believe they did.

15 Q. So we've looked at several agreements signed on March 22nd,  
16 2011, correct?

17 A. Yes.

18 Q. We've looked at the repurchase agreements, we've looked at  
19 the option to purchase agreement, correct, and we've looked at  
20 the PSD Partners agreement.

21 And all of these were being negotiated at the same  
22 time, correct?

23 A. That's correct.

24 Q. And they were all part of one package, correct?

25 A. I don't know if I could say that, but, yes, they are all

N4JKUSB1

Garg - Cross

1 negotiated at the same time.

2 Q. They're part of one structure; would it be fair to say  
3 that?

4 A. Yes.

5 Q. I'm now going to go through some subcontracts with you.  
6 Let's start with an entity called Activist.

7 First, let me ask you: PRES, as of 2011, did not have  
8 any employees, correct?

9 A. That's correct.

10 Q. And, in fact, PRES has never had any employees, correct?

11 A. That's correct.

12 Q. So the plan, when PRES entered into the engagement  
13 agreements, was for it to subcontract with another entity,  
14 correct?

15 A. That's correct.

16 Q. And that entity initially was Activist Special Advisory  
17 Services, correct?

18 A. That's correct.

19 Q. So let's look at that agreement. That is tab 14,  
20 Exhibit 2037.

21 This is a subcontract between PRES and Activist  
22 Special Advisory Services, correct?

23 A. That's correct.

24 Q. Entered into on March 22nd, 2011?

25 A. That's correct.

N4JKUSB1

Garg - Cross

1 Q. If we go to the page with Bates stamp 654, this is your  
2 signature for PRES, correct?

3 A. That's correct.

4 Q. It's also your signature for Activist Special Advisory  
5 Services?

6 A. That's correct.

7 MR. SAVLA: Your Honor, we move this into evidence.

8 THE COURT: Any objection?

9 2037 is admitted.

10 (Trial Exhibit 2037 received in evidence)

11 MR. SAVLA: Thank you.

12 BY MR. SAVLA:

13 Q. So just to go back to that page, the signature page, you're  
14 signing for PRES and for Activist Special Advisory, correct?

15 A. That's correct.

16 Q. And it's cosigned by Raja Visweswaran, correct?

17 A. That's correct.

18 Q. And this Activist Special Advisory Services company, you're  
19 an indirect owner of that, correct?

20 A. That's correct.

21 Q. And you're one of two indirect owners of Activist?

22 A. That's correct.

23 Q. If we look at paragraph 3(a) of the agreement, on the first  
24 page, with the Bates stamp ending 650, this sets forth  
25 Activist's fees and expenses, correct?

N4JKUSB1

Garg - Cross

1 A. That's correct.

2 Q. And so under this agreement, Activist is entitled to  
3 7-1/2 -- costs plus 7-1/2 percent, correct?

4 A. Yes.

5 Q. And Activist did not have any clients in addition to --  
6 other than Phoenix?

7 A. Activist, as its own entity, didn't have any other clients,  
8 no.

9 Q. And Mr. Jonsson and Dr. Tang were contracted through  
10 Activist to work on the engagement agreements?

11 A. That's correct. For a period of time.

12 Q. For his work for Activist, Mr. Jonsson received bonuses  
13 directly from PRES, correct?

14 A. I don't fully remember. He may have.

15 Q. So let's look at -- well, let me ask about Dr. Tang.

16 Did Dr. Tang receive bonuses directly from PRES?

17 A. Yes. But I'm not sure, in your last question, you had said  
18 on behalf of the work that they did for Activist, so that's  
19 where I'm confused. So I don't have perfect memory in that  
20 regard.

21 Q. Okay. So let's look at your deposition testimony. And  
22 let's turn to page 103.

23 (Video playback as follows:)

24 "Q. And then you also mentioned Dr. Tang and Mr. Jonsson,  
25 correct?

N4JKUSB1

Garg - Cross

1 "A. Yes.

2 "Q. And were they separately contracted, or were they part of  
3 the transaction with Activist?

4 "A. They were -- they were contracted through Activist, and  
5 they also received bonuses from PRES directly."

6 Q. Does that refresh your recollection as to whether they  
7 received bonuses from PRES directly?

8 A. Yes, that's helpful. Thank you.

9 Q. And the bonuses to Mr. Jonsson and Dr. Tang, they were  
10 determined by you in your discretion, correct?

11 A. By myself and Mr. Visweswaran.

12 Q. By the two of you, in your discretion, correct?

13 A. That's correct.

14 Q. Now, this subcontract was later amended, correct?

15 A. That's correct.

16 Q. Let's look at Exhibit 2038, which is tab 15 in your binder,  
17 not in evidence. Let's go to the page ending in 649.

18 So this is signed by you, yes?

19 A. That's correct.

20 Q. And countersigned by Mr. Visweswaran?

21 A. Yes.

22 MR. SAVLA: Your Honor, we move Exhibit 2038 into  
23 evidence.

24 THE COURT: Any objection?

25 2038 is admitted.

N4JKUSB1

Garg - Cross

(Trial Exhibit 2038 received in evidence)

BY MR. SAVLA:

Q. Now, this is an amendment to the subcontract we just saw, correct?

A. Yes.

Q. You negotiated this amendment with Mr. Visweswaran?

A. That's correct.

Q. And this amendment is dated as of May 7, 2012?

A. Yes, that's correct.

Q. Let's look at another subcontract. Now we're going to go to Exhibit 2039, which is tab 16.

THE COURT: Not yet in evidence?

MR. SAVLA: Not yet in evidence.

THE COURT: Thank you.

BY MR. SAVLA:

Q. So this is an agreement as of July 1, 2013, between PRES and Phoenix Advisors and Managers Ltd., correct?

A. Yes.

Q. Let's go to page 6, which is the Bates ending 524.

And this is Mr. Visweswaran's signature, correct?

A. Yes.

Q. And someone by the name of Govind Rathi?

A. Yes.

Q. You have seen this agreement before, correct?

A. I have.

N4JKUSB1

Garg - Cross

1 MR. SAVLA: Your Honor, we move to admit this into  
2 evidence.

3 THE COURT: Any objection?

4 Exhibit 2039 is admitted.

5 (Trial Exhibit 2039 received in evidence)

6 BY MR. SAVLA:

7 Q. So when this contract we're looking at, this July 2013  
8 contract we're looking at, by this time, the Activist  
9 subcontract is terminated, correct?

10 A. That's correct.

11 Q. And this contract takes its place?

12 A. That's correct.

13 Q. And the new subcontractor now for the engagement agreements  
14 is Phoenix Advisors and Managers Ltd.?

15 A. That's correct.

16 Q. And Phoenix Advisors and Managers Ltd. was a new entity  
17 created so that it could contract with PRES?

18 A. That's correct.

19 Q. And PRES is still subcontracting with Phoenix Advisors and  
20 Managers Ltd., correct?

21 A. That's correct.

22 Q. And you created Phoenix Advisors and Managers Ltd.,  
23 correct?

24 A. That's correct.

25 Q. Phoenix Advisors and Managers is a subsidiary of



N4JKUSB1

Garg - Cross

1 1/0 Capital Ltd.?

2 A. Yes.

3 Q. Let's look at Exhibit 2059, which is tab 3. And this  
4 document is in evidence.

5 If we go to the second page, the page ending Bates  
6 stamp 445, on the right-hand side, we see the 1/0 Capital Ltd.,  
7 correct?

8 A. Yes.

9 Q. And you are one of the owners of 1/0 Capital Ltd.?

10 A. Yes.

11 Q. Mr. Calamari is another owner of 1/0 Capital Ltd.?

12 A. Yes.

13 Q. And 1/0 Capital Ltd. owns 100 percent of Phoenix Advisors  
14 and Managers Ltd.?

15 A. That's correct.

16 Q. Phoenix Advisors and Managers Ltd. never had any employees,  
17 correct?

18 A. That's correct.

19 Q. So another entity performed work for Phoenix Advisors and  
20 Managers Ltd., correct?

21 A. That's correct.

22 Q. And the people who performed work for Phoenix Advisors and  
23 Managers Ltd. did so as part of their duties as partners of  
24 1/0 Capital, correct?

25 A. Yes.

N4JKUSB1

Garg - Cross

1 Q. Dr. Tang was one of the partners at 1/0 Capital, correct?

2 A. Yes.

3 Q. And he performed work for Phoenix Advisors and Managers  
4 Ltd.; yes?

5 A. Yes.

6 Q. Mr. Jonsson was one of the partners at 1/0 Capital,  
7 correct?

8 A. Yes.

9 Q. And Mr. Jonsson performed work for Phoenix Advisors and  
10 Managers Ltd.?

11 A. Yes.

12 Q. And Mr. Savino was one of the partners at 1/0 Capital,  
13 correct?

14 A. Yes.

15 Q. And Mr. Savino performed work for Phoenix Advisors and  
16 Managers?

17 A. Yes.

18 Q. So Phoenix Advisors and Managers Ltd. has a contract for  
19 services with another Phoenix entity, correct?

20 A. Yes. They have a subcontract.

21 Q. Let's turn to that. That's tab 17 of your binder, not in  
22 evidence.

23 So this is a contract we're looking at dated as of  
24 August 1, 2015, correct?

25 A. Yes.

N4JKUSB1

Garg - Cross

1 Q. If we turn to page with the Bates stamp ending KAHN 444.

2 So this is signed by you on behalf of Phoenix Advisors  
3 and Managers Ltd., correct?

4 A. Yes.

5 Q. And countersigned by Mr. Calamari as general counsel of  
6 Phoenix Advisors and Managers USA LLC?

7 A. That's correct.

8 MR. SAVLA: Your Honor, we move to admit this into  
9 evidence, Exhibit 2043.

10 THE COURT: No objection being heard, 2043 is  
11 admitted.

12 (Trial Exhibit 2043 received in evidence)

13 BY MR. SAVLA:

14 Q. Now, you see the name Mr. Calamari there, and he's signed  
15 this agreement.

16 Mr. Calamari has been the general counsel to a number  
17 of other entities related to you, correct?

18 A. That's correct.

19 Q. He has been the general counsel for PRES, correct?

20 A. I believe he's acted in that capacity.

21 Q. He has been the general counsel for a host of 1/0 Capital  
22 companies, correct?

23 A. That's correct.

24 Q. And he's been your personal counsel, correct?

25 A. That's correct.

N4JKUSB1

Garg - Cross

1 Q. And you were a founding partner of 1/0 Capital LLC,  
2 correct?

3 A. That's correct.

4 Q. And Mr. Calamari was the general counsel for 1/0 Capital,  
5 correct?

6 A. That's correct.

7 Q. Mr. Calamari is also a partner at 1/0 Capital, correct?

8 A. Yes, that's correct.

9 Q. This entity, Phoenix Advisors and Managers USA LLC, that  
10 does have employees, correct?

11 A. Yes; many.

12 Q. And Mr. Jonsson works for Phoenix Advisors and Managers  
13 USA?

14 A. He did work for them.

15 Q. Dr. Tang works for Phoenix Advisors and Managers USA?

16 A. Yes.

17 Q. Mr. Savino works for Phoenix Advisors and Managers USA?

18 A. Yes.

19 Q. I'd like to ask some questions about Triaxx Asset  
20 Management's purchase of ICP.

21 A. Okay.

22 Q. There came a time when you were involved in the purchase of  
23 ICP, the collateral manager, correct?

24 THE COURT: Let me interrupt you, Mr. Savla. It's  
25 2043 in evidence?

N4JKUSB1

Garg - Cross

1 MR. SAVLA: I believe we've moved it into evidence.  
2 If not, I ask to move it into evidence.

3 THE COURT: It either is in or it is admitted.

4 MR. SAVLA: Thank you, your Honor.

5 BY MR. SAVLA:

6 Q. So I think my last question was: You were involved in the  
7 purchase of the collateral manager, correct?

8 A. Of ICP Asset Management?

9 Q. Yes.

10 Of ICP Asset Management, correct?

11 A. Yes.

12 Q. And you were involved in that decision to purchase?

13 A. Yes.

14 Q. ICP was for sale at the time because of a settlement  
15 between Mr. Priore and the SEC, correct?

16 A. That's correct.

17 Q. And you understood that as part of that settlement with the  
18 SEC, the SEC did not want Mr. Priore to be managing ICP going  
19 forward, correct?

20 A. That's correct. That was my understanding.

21 Q. And at this time, we saw the option -- the purchase option,  
22 the one-dollar purchase option earlier today.

23 Do you remember that?

24 A. Yes.

25 Q. So at this time, when ICP was going up for sale, ARAM

N4JKUSB1

Garg - Cross

1 Phoenix Investments had a one-dollar purchase option, correct?

2 A. That's correct.

3 Q. But you did not purchase ICP for one dollar; is that right?

4 A. Yes. That was not possible for -- Phoenix -- ARAM Phoenix  
5 Investments was not able to purchase ICP.

6 Q. And the reason it was not able to purchase ICP for one  
7 dollar is because the SEC would not approve the one-dollar  
8 purchase, correct?

9 A. The SEC -- I was told that the SEC was not going to approve  
10 the purchase by ARAM Phoenix Investments Ltd. I wasn't given a  
11 reason, whether it was the one-dollar price or anything else.

12 Q. Again, let's look at your deposition testimony. I'm going  
13 to flip back to tab 1, at page 190 at line 22 to 191 at line 2.

14 (Video playback as follows:)

15 "Q. So when you talked about coming up with a price, what do  
16 you mean by that?

17 "A. Well, the SEC didn't want us to buy it for one dollar.  
18 They said they wouldn't approve it."

19 Q. So, is that your understanding, that the SEC --

20 MS. BEAUMONT: Can we have the whole answer?

21 MR. SAVLA: Okay. Let's turn to the actual  
22 transcript.

23 THE COURT: Can you put that transcript page up on the  
24 screen, Mr. Savla?

25 MR. SAVLA: I'm sure the capable Mr. Gibson can.

N4JKUSB1

Garg - Cross

1 BY MR. SAVLA:

2 Q. So let's go to page 190, line 15:

3 "Q. And I think we had looked at it before, and you referenced  
4 the option to purchase ICP, right?

5 "A. Yes.

6 "Q. And wasn't that option to purchase for one dollar?

7 "A. Yes.

8 "Q. So when you talk about coming up with a price, what do you  
9 mean by that?

10 "A. Well, the SEC didn't want us to buy it for one dollar.  
11 They said they wouldn't approve it. They wanted us to make  
12 some payment that was in excess of one dollar."

13 Q. Have I read that right?

14 A. I think that that's right. I think there's context missing  
15 there. So, there was two reasons why ARAM Phoenix Investments  
16 couldn't buy ICP Asset Management. The first reason was that  
17 the SEC did want more than one dollar, but the second reason  
18 was that there was a gentleman named Michael Balboa that had  
19 been involved with the initial creation of ARAM Global and ARAM  
20 Phoenix, and the SEC did not want anyone -- want any entity  
21 where he had an association, past or present, involved in the  
22 purchase of the collateral manager.

23 Q. Okay.

24 A. So that's the fuller explanation.

25 Q. So the second reason is Mr. Balboa, whose name we saw

N4JKUSB1

Garg - Cross

1 before in connection with ARAM, they didn't want Mr. Balboa  
2 involved?

3 A. Yes, they didn't want -- yeah, even if in a passive way.

4 Q. So you created an entity to purchase the collateral  
5 manager, correct?

6 A. I did, yes.

7 Q. Sorry, I didn't hear your answer.

8 A. I did, yes.

9 Q. You did.

10 And the entity that you created to purchase the  
11 collateral manager is Triaxx Holdco, correct?

12 A. That's correct.

13 Q. And you own 55 percent of Triaxx Holdco?

14 A. That's correct.

15 Q. And Mr. Calamari owns the other 45 percent, correct?

16 A. Yes, that's correct.

17 Q. After the acquisition, the collateral manager was renamed  
18 Triaxx Asset Management, correct?

19 A. That's correct.

20 Q. And once Triaxx Holdco took over the collateral manager,  
21 Mr. Calamari and Ms. Saddiq ran the day-to-day operations,  
22 correct?

23 A. That's correct.

24 Q. And Ms. Saddiq is a paralegal at 1/0 Capital, correct?

25 A. Was, yeah.



N4JKUSB1

Garg - Cross

1 Q. Was a paralegal at 1/0 Capital?

2 A. Uh-huh.

3 Q. And the purchase and sale agreement for ICP, if we turn to  
4 tab 18, this is the purchase and sale agreement, correct?

5 A. Okay.

6 Q. Is that right?

7 A. That's what it looks like, yeah.

8 Q. If we go to the Bates stamp ending in hundreds, it's such a  
9 long document, it's 160100.

10 A. Okay.

11 Q. And you're signing this agreement, correct?

12 A. Yes.

13 MS. BEAUMONT: Objection. I think this is the  
14 guarantee; it's not the agreement itself.

15 THE COURT: Ms. Beaumont is correct. You've gone too  
16 far, Mr. Savla.

17 MR. SAVLA: Okay. This is why I'm not a corporate  
18 lawyer.

19 THE COURT: I mean, you've gone too far in the  
20 document.

21 MR. SAVLA: I understand.

22 So I believe it's actually page 905.

23 THE WITNESS: Yeah.

24 MR. LAURIELLO: I believe it's ending in 45.

25 MR. SAVLA: The page ending in 45, that is --

N4JKUSB1

Garg - Cross

1 THE COURT: The one that says signature page to  
2 purchase and sale agreement on the bottom?

3 MR. SAVLA: Correct.

4 BY MR. SAVLA:

5 Q. So this is signed by Mr. Priore, correct?

6 A. Yes.

7 Q. And the next page, it's signed by you, correct?

8 A. Yes.

9 Q. Let's go on to another subject.

10 THE COURT: Is this document in evidence, Mr. Savla?

11 MR. SAVLA: It is in evidence, yes.

12 THE COURT: Thank you.

13 BY MR. SAVLA:

14 Q. Now I'd like to discuss phone calls with PIMCO.

15 A. Okay.

16 Q. You say that you spoke to an employee at PIMCO, correct?

17 A. I did.

18 Q. And you spoke about the Triaxx CDOs, correct?

19 A. I did.

20 Q. And that employee at PIMCO was someone called Giang Bui,  
21 correct?

22 A. I think it was Giang Bui, G-a-n-g B-u-i.

23 Q. And last name B-u-i?

24 A. Yes.

25 Q. And you think you had two calls with Ms. Bui, correct?

N4JKUSB1

Garg - Cross

1 A. It may have been more than two, but I think at least two.

2 Q. And you did not keep notes of your calls with Ms. Bui,  
3 correct?

4 A. I think I sent an email, like, maybe both times, but at  
5 least one time.

6 Q. So it's fair to say that we would expect to see emails of  
7 your calls with Ms. Bui?

8 A. Yeah, I think I sent an email saying the call went well, or  
9 something like that.

10 Q. Did the emails describe what you had discussed with  
11 Ms. Bui?

12 A. I don't think so.

13 Q. So, is it fair to say that there's no notes of the  
14 substance of your calls with Ms. Bui?

15 A. No, probably not. I mean, none that I have in my  
16 possession.

17 Q. So just for the clarity of the record, you don't have notes  
18 of the substance of your calls with Ms. Bui?

19 A. I don't think so, no.

20 Q. In your declaration, you say that you recall two calls with  
21 Ms. Bui?

22 Let's turn to paragraph 60 of your declaration.

23 A. That's tab 2?

24 Q. That's tab 2. Thank you.

25 A. Yeah, two calls.

N4JKUSB1

Garg - Cross

1 Q. But now you think there may have been more than two calls;  
2 is that correct?

3 A. I recall at least two calls. There may have been more.

4 Q. Is it fair to say that your memory of when the calls took  
5 place is fuzzy?

6 A. No.

7 Q. So you have a clear memory of these calls, correct?

8 A. I don't know the exact date, I don't remember the date. If  
9 you ask me the date, I don't remember it, but I remember around  
10 when the calls took place and what the content of the calls  
11 were.

12 Q. Do you know if -- you don't remember the exact date,  
13 correct?

14 A. No.

15 Q. Do you know if there were two separate instances that  
16 warranted a call?

17 A. Yes.

18 Q. You remember that clearly, that there were two separate  
19 instances --

20 A. Yes.

21 Q. -- that warranted a call, correct?

22 Let's go to your deposition testimony again. We're  
23 going to pull up page 283 at line 22.

24 (Video playback as follows:)

25 Q. "Okay. So let's take that bit by bit.

N4JKUSB1

Garg - Cross

1 "So, the first call was when we did the deal.

2 "What do you mean by 'when we did the deal'?

3 "A. I think it was around when Phoenix got the mandate from  
4 ICP to pursue the Activist strategy.

5 "Q. Okay. And --

6 "A. It might have been a little later. I mean, my memory is  
7 fuzzy. And so I think there might have been two separate  
8 instances that warranted a call. I don't fully remember."

9 Q. You said that, right?

10 A. Yes.

11 MS. BEAUMONT: I'm sorry, that excised the middle of  
12 the answer. I think it's not fair to excerpt it that way.

13 MR. SAVLA: Okay. Well --

14 THE COURT: Perhaps we can put the page of the  
15 transcript up, 283?

16 MR. SAVLA: So let's go through and see if there's  
17 more context.

18 BY MR. SAVLA:

19 Q. Let's start at 283 at line 22. And I see there:

20 "Q. Okay. So let's take that bit by bit.

21 "So the first call was" -- and I think that's you  
22 speaking. "So the first call was when we did the deal."

23 I say --

24 A. I'm sorry if we're starting on the subject matter. If you  
25 start at the top of page 283, it goes through the context --

N4JKUSB1

Garg - Cross

1 Q. Okay.

2 A. -- about the first call.

3 Q. I am happy to go through a large chunk of the deposition  
4 testimony.

5 "So, what did you discuss with Ms. Bui?" You see I  
6 asked that at line 3?

7 A. Yes.

8 Q. And you say, "The first call was, I think, in the beginning  
9 when we did the deal. And it was what are you doing, what was  
10 your plan. Maybe we did the deal or a little bit afterwards, I  
11 think, yeah. What were we doing? What was the plan? I don't  
12 remember at the time exactly. And then, like, how were you  
13 paid? And we went through that.

14 "Then nothing happened after that. I remember trying  
15 to pitch that, you know, we could do the same on these deals  
16 for her other deals that she owned. And then there was another  
17 call about what was the methodology that was going on to be  
18 employed by the CDO manager to determine whether or not -- you  
19 know, what to do with the defaulted securities. I think there  
20 were two calls."

21 So let me just pause there.

22 You discussed defaulted securities with Ms. Bui as  
23 well, correct?

24 A. I did.

25 THE COURT: Can we just get the full deposition --

N4JKUSB1

Garg - Cross

1 MR. SAVLA: Of course.

2 THE COURT: -- testimony into the record, and then you  
3 can go back and ask questions?

4 MR. SAVLA: Of course.

5 BY MR. SAVLA:

6 Q. And then it goes on:

7 "Q. Okay. So let's take that bit by bit.

8 So the first call when we did the deal."

9 What do you mean by 'did the deal'?

10 THE COURT: I think that's you speaking, Mr. Savla.

11 MR. SAVLA: It is.

12 "A. I think it was around when Phoenix got the mandate from  
13 ICP to pursue the Activist strategy.

14 "Q. Okay. And --

15 "A. It might have been a little later. I mean, my memory is  
16 fuzzy because I think PIMCO bought the 07-1 deal from one of  
17 the Maiden Lane vehicles, or already owned the 07-1 deal. I  
18 don't remember. Somehow, I remember that there was something  
19 where PIMCO bought the Maiden Lane -- bought the 07-1 deal from  
20 Maiden Lane, and then they also bought the 06-2 senior notes  
21 from Cerberus. And so I think there may have been two separate  
22 instances that warranted a call. I don't fully remember."

23 Did I read that correctly?

24 A. You read that correctly.

25 Q. Is it fair to say that there was a call with PIMCO about

N4JKUSB1

Garg - Cross

1 defaulted securities?

2 A. There was.

3 Q. And one of the calls you're mentioning here related to  
4 defaulted securities, correct?

5 A. Yes.

6 Q. Now, when you talked to Ms. Bui, you did not discuss the  
7 engagement agreements, correct?

8 A. The first time, I did. We didn't name them by name, but  
9 she asked about what were we going to do -- what were we going  
10 to do about repurchases, what were we going to do about  
11 servicing issues, and then she asked how we got paid.

12 Q. But you did not discuss the Phoenix engagement letter with  
13 Ms. Bui, correct?

14 A. I discussed the content of the letter. I didn't discuss  
15 the actual letter itself, no.

16 Q. So let's go to your deposition testimony at page 286,  
17 line 21.

18 (Video playback as follows:)

19 "Q. Did you discuss the Phoenix engagement letter with  
20 Ms. Bui?

21 "A. No."

22 Q. And you said that, correct?

23 A. Yeah, that's consistent.

24 Q. When you talked to Ms. Bui, did you discuss the fact that  
25 certain recoveries would be kept outside the CDO waterfall?



N4JKUSB1

Garg - Cross

1 A. No. At that point in time, we didn't know how the  
2 recoveries were going to come through.

3 Q. When you talked to Ms. Bui, did you mention the one-dollar  
4 purchase option?

5 A. When I first spoke to her? No.

6 Q. When you spoke to Ms. Bui, did you mention the repurchase  
7 agreements?

8 A. I don't think so.

9 Q. When you spoke to Ms. Bui, did you discuss the fact that  
10 you were considering purchasing ICP?

11 A. Oh, at that time, in 2011, I was not considering purchasing  
12 ICP, so, no.

13 Q. Was there any discussion with Ms. Bui about Phoenix  
14 Advisors and Managers Ltd.?

15 A. No, because Phoenix Advisors and Managers Ltd. didn't exist  
16 at that time.

17 Q. Has there ever been discussion with Ms. Bui about Phoenix  
18 Advisors and Managers Ltd.?

19 A. I don't think so.

20 Q. Has there been discussion with Ms. Bui about Phoenix  
21 Advisors and Managers USA?

22 A. I don't think so.

23 Q. Did you discuss 1/0 Capital with Ms. Bui?

24 A. No.

25 Q. It's correct that you had no discussion with Ms. Bui about

N4JKUSB1

Garg - Cross

1 discretionary bonuses that could be paid to Mr. Jonsson,  
2 correct?

3 A. Nope.

4 Q. No discussion with Ms. Bui about discretionary bonuses that  
5 could be paid to Mr. Tang, correct?

6 A. No.

7 Q. Now let's discuss Phoenix's fees in the engagement letters  
8 for a minute.

9 A. Okay.

10 THE COURT: Mr. Savla, I want to remind you of the  
11 time. It's almost 11:00 o'clock, when we would normally take  
12 our break. Is this a good time to take it?

13 MR. SAVLA: I think this would be a good time to take  
14 it.

15 THE COURT: All right, ladies and gentlemen. Let's  
16 try to keep it to ten minutes and reconvene at 11:10.

17 You may step down. Let me warn you, Mr. Garg, you  
18 will remain under oath when you return, and during the break,  
19 you are not to discuss your testimony or the underlying facts  
20 about which you are testifying with your counsel or with  
21 others.

22 THE WITNESS: Okay.

23 (Recess)  
24  
25

N4J3USB2

Garg - Cross

1 (In open court; case called)

2 THE COURT: Mr. Garg, you may be seated.

3 Mr. Savla, if you would indulge me for a moment,  
4 before you move on to the purchase and sale agreement. Before  
5 the break, you asked Mr. Garg whether he had discussed various  
6 contracts with Ms. Bui. Would you ask the witness, please,  
7 whether he discussed the PSD partners contract with Ms. Bui.

8 MR. SAVLA: Of course.

9 BY MR. SAVLA:

10 Q. Mr. Garg, you did not discuss the PSD agreement with  
11 Ms. Bui, correct?

12 A. I didn't.

13 Q. So now let's talk about the fees within the waterfall for a  
14 moment.

15 Phoenix sent invoices to the collateral manager and  
16 the trustee based on the engagement letters, correct?

17 A. Yes.

18 Q. And under those invoices, the trustee would make payments  
19 to PRES, correct?

20 A. That's correct.

21 Q. And between 2011 and 2018, PRES received \$30 million in  
22 fees under those invoices, correct?

23 A. I don't recall the exact number. But, it received fees  
24 under those invoices.

25 Q. And those payments to PRES would come as part of the

N4J3USB2

Garg - Cross

1 monthly distributions within the waterfall of the CDOs,  
2 correct?

3 A. That's correct.

4 Q. And Phoenix invoices included various fees under the  
5 engagement agreements, correct?

6 A. That's correct.

7 Q. One of those fees were monthly diligence fees, correct?

8 A. That's correct.

9 Q. So let's go to Exhibit 12, which is tab 8 in the binder.

10 And this is the engagement agreement for the 2007-1 CDO,  
11 correct?

12 A. Yes.

13 Q. So let's go to page 12, actually page 11, which is at the  
14 bottom there it says ARAM shall be entitled to a diligence fee.  
15 You see that?

16 A. Yes.

17 Q. We go to page 15, which is the Bates ending 190. Annex II.

18 A. Yup.

19 Q. So, these are the diligence fees, correct?

20 A. That's correct.

21 Q. And they're charged on a monthly basis?

22 A. That's correct.

23 Q. They're charged in the CDO waterfall, correct?

24 A. No, they're just charged and they're paid out --

25 Q. They're paid out of the CDO waterfall?

N4J3USB2

Garg - Cross

1 A. Yeah.

2 Q. And for this deal in years 1 and 2, it is a monthly fee of  
3 20,000, correct?

4 A. That's correct.

5 Q. Then years 3 and 4, it's 10,000.

6 A. Hmm-hmm.

7 Q. And 5 and 6 and thereafter, 5,000, correct?

8 A. That's correct.

9 Q. So, let's go to Exhibit 3297, which is tab 21 of the  
10 binder. It's in evidence. So the engagement agreement is  
11 entered into in 2011, correct?

12 A. Yup.

13 Q. So 3297 is year 4 of the contract, because it's an invoice  
14 from 2015, correct?

15 A. Correct.

16 Q. So, in year 4, we just saw the diligence fee should be  
17 10,000, correct, for this deal for 2007-1?

18 A. That's correct.

19 Q. And the diligence fee here is 20,000, correct?

20 A. Yes.

21 Q. So, is it fair to say that the 07-1 deal is being  
22 overcharged for the diligence fees?

23 A. It looks like there was an error.

24 Q. And that error has gone on for some time, correct?

25 A. I don't know whether it was this invoice or whether it was

N4J3USB2

Garg - Cross

1 all of the invoices, but I acknowledge that this invoice that  
2 there is an error.

3 Q. So let's look at Exhibit 2098.

4 THE COURT: Before we do that, Mr. Savla, my deputy  
5 tells me 3297 was not admitted by stipulation. Is my deputy  
6 right, counsel?

7 MR. SAVLA: I have a notation that it was admitted.

8 THE COURT: She's usually right.

9 MS. BEAUMONT: My records show it was not.

10 MR. SAVLA: In that case, let's look at Exhibit 3297.

11 Q. Is this a PRES invoice?

12 A. It looks like it.

13 Q. And it's created in the ordinary course of business,  
14 correct?

15 A. Seems like it.

16 Q. It's maintained in the ordinary course of business?

17 A. Yes.

18 MR. SAVLA: Your Honor, I move to admit Exhibit 3297.

19 MS. BEAUMONT: No objection.

20 THE COURT: 3297 is admitted.

21 (Joint Exhibit 3297 received in evidence)

22 Q. So let's go to Exhibit 2098, which is tab 22 in your  
23 binder. And as far as I know, this is in evidence.

24 So, this is an e-mail from Mr. Jonsson to Kenneth  
25 Sliwa at U.S. Bank and Xin Rong?

N4J3USB2

Garg - Cross

1 A. That's what it looks like, yes.

2 Q. It's copying Mr. Calamari and yourself, correct?

3 A. That's correct.

4 Q. And you're copied on the ARAM Phoenix e-mail domain?

5 A. Yes, that's correct.

6 Q. Let's turn to the attachment which is the next page, it is  
7 an invoice. And here this is an invoice for 06-1, correct?

8 A. Yup.

9 Q. And the due diligence fee for this invoice is \$30,000,  
10 correct?

11 A. Correct.

12 Q. Do you know if this is an overcharge?

13 A. It looks like it is an error as well. Because the same  
14 logic would apply to the other deals.

15 Q. So now do you remember this morning you corrected your  
16 declaration?

17 A. Yes.

18 Q. And you said that your declaration was wrong, because PRES  
19 had charged the same diligence fee across all three CDOs,  
20 correct?

21 A. No, my declaration said it charged the same across the  
22 three CDOs, and that was incorrect.

23 Q. That was incorrect?

24 A. Yeah.

25 Q. Because, according to your declaration, the three CDOs

N4J3USB2

Garg - Cross

1 should have been charged different amounts, correct?

2 A. That's correct, yeah.

3 Q. And the diligence fees were wrong, simply because all three  
4 CDOs were being charged the same after a period of time?

5 MS. BEAUMONT: Objection.

6 THE COURT: I didn't understand that question.

7 A. I'm sorry.

8 Q. Let me ask it another way.

9 Why were the due diligence fees wrong?

10 A. In my declaration or in this invoice?

11 Q. In your declaration.

12 A. In my declaration, the diligence fees, what I wrote was  
13 that they were \$50,000 a month, and that was not the case.  
14 They were \$50,000 a month for 06-2, and they were a smaller  
15 amount for 06-1 and 07-1. That's where my initial declaration  
16 was incorrect, and that's why I wanted to correct that.

17 Q. So, let's go to Exhibit 11, which I don't have in my binder  
18 but I'll ask to bring up on the screen.

19 THE COURT: This is the engagement letter for 2006-2,  
20 which is in evidence.

21 MR. SAVLA: It is in evidence.

22 Q. First of all, this is the engagement letter for 2006-2,  
23 correct?

24 A. That's correct.

25 Q. Let's go to page 16 which shows another diligence fee



N4J3USB2

Garg - Cross

1 chart.

2 A. Yup.

3 Q. And here we have another chart showing the different  
4 diligence fees over time, correct?

5 A. That's correct.

6 Q. And it shows for years 1 and 2, it's 50,000. Then it goes  
7 down in years 3 and 4 to 35,000. Correct?

8 A. Yup.

9 Q. 5 and 6 to 25,000. And thereafter, 25,000, correct?

10 A. Yup.

11 Q. Let's look at Exhibit 2098.

12 A. Which tab is that, sir?

13 Q. That is tab 22.

14 A. Okay.

15 Q. This is showing a diligence fee of 30,000, correct?

16 A. Yup.

17 Q. And this is seven years after the engagement letters were  
18 signed, correct?

19 THE COURT: This is a different -- this is a different  
20 CDO, Mr. Savla.

21 MR. SAVLA: Oh right. I apologize.

22 THE WITNESS: It is the page after.

23 THE COURT: Mr. Garg is correct. The second page of  
24 the exhibit is 2006-2.

25 MR. SAVLA: Thank you.

N4J3USB2

Garg - Cross

1 Q. Let's look at the due diligence fee there. It is 50,000,  
2 correct?

3 A. Hmm-hmm.

4 Q. That diligence fee is incorrect, correct?

5 A. You're right. It's incorrect.

6 Q. That's an overcharge to the 06-2 noteholders, correct?

7 A. To the deal, yes.

8 Q. Let's look at Exhibit 10 for the 06-1 engagement letter.

9 And it's not in the binder, but it is in evidence. Let's go to  
10 page 16. And this shows the same diligence fees for the 06-1  
11 deal, correct?

12 A. Yes.

13 Q. And it shows a cascading set of figures, correct?

14 A. It does.

15 Q. Let's go back to Exhibit 2098, which is the tab we were  
16 looking at before, tab 22.

17 A. Hmm-hmm.

18 Q. This is an invoice from 2018?

19 A. Yes.

20 Q. And the due diligence fee is for 30,000, correct?

21 A. Yup.

22 Q. So that's an overcharge to the deal as well, correct?

23 A. You are right.

24 Q. Will the deal be made whole for these overcharges?

25 A. I think the -- they should be.

N4J3USB2

Garg - Cross

1 THE COURT: Don't keep me in suspense, Mr. Savla.  
2 Have you added up the numbers I trust?

3 MR. SAVLA: We actually haven't, but we will.

4 THE COURT: Thank you.

5 Q. As well as the due diligence fees, the engagement  
6 agreements also call for an activist implementation fee,  
7 correct?

8 A. Yup.

9 Q. Just pulling up the engagement agreement again. Let's go  
10 to Exhibit 12. If we go to --

11 A. I'm sorry. What tab is that?

12 Q. It's tab 8. If we go to page 12, with the Bates ending  
13 4187, there is an activist implementation fee as well, correct?

14 A. That's correct.

15 Q. And the activist implementation fee is equal to \$10,000 a  
16 month.

17 A. That's correct.

18 Q. And if we go down to the next paragraph, it is a long  
19 paragraph that says -- just to back up.

20 That's 10,000 per month per security, correct?

21 A. Per security.

22 Q. So, in the next paragraph we're looking at, it says, "In  
23 respect of such security, the activist implementation fee shall  
24 be payable on each distribution date following the date on  
25 which ARAM is engaged by the CDO in writing to provide activist

N4J3USB2

Garg - Cross

1 implementation services in respect of such security until the  
2 earlier of" and then it goes on part "(a) the distribution date  
3 on which the aggregate implementation fee paid by the CDO in  
4 respect of such security exceeds 250,000."

5 Do you see that?

6 A. Yes.

7 Q. So, if a monthly activist implementation fee per security  
8 is 10,000, and PRES charges 250,000 for those monthly fees over  
9 time, am I right that under (a) it's capped at 250,000?

10 A. Outside of the recovery fees, yes, it's capped at 250,000.

11 Q. Outside of the recovery fees?

12 A. Yeah.

13 Q. (b) goes on to say, "The date of recovery determined by CDO  
14 in its sole discretion or the collateral manager on its behalf  
15 on which the CDO has completed the recovery of funds."

16 So, it is a \$250,000 cap until the earlier of monthly  
17 distribution dates are reached or there is a recovery, correct?

18 A. That's correct. The CDO manager -- in practice, the CDO  
19 manager would tell us to stop working on a deal.

20 Q. It goes on to say, "Provided the value as determined by the  
21 CDO in its sole discretion or the collateral manager on its  
22 behalf of funds or assets recovered by the CDO relating to a  
23 security exceeds 500,000, the CDO shall pay to ARAM an  
24 aggregate amount of activist implementation fees in respect of  
25 such security, taking into account any activist implementation

N4J3USB2

Garg - Cross

1 fees paid by the CDO to ARAM on or prior to such date of  
2 determination, equal to 250,000, irrespective of when the date  
3 of recovery may occur."

4 A. Yes, it says that.

5 Q. Now, is the aggregate cap here 250,000?

6 A. For the activist fee, and 250,000 for the incentive fee.

7 Q. So you read this paragraph as referring to an incentive fee  
8 and an aggregate monthly -- and a monthly activist  
9 implementation fee, two separate fees?

10 A. Yeah, I think there was two, two separate fees. There  
11 was -- hold on.

12 Yeah, I read it as two separate.

13 Q. And does the paragraph, the paragraph doesn't mention  
14 incentive fees, correct?

15 A. No. The business agreement, and I think there was some  
16 documentation that corrected this later on, was that we would  
17 run activist fees for up to 250K, so about 25 months of  
18 activist work, and then we would get a recovery fee of a  
19 similar amount.

20 Q. So am I right that subsequently this paragraph had to be  
21 corrected?

22 A. It did have to be corrected, yes. Or it had to be  
23 explained.

24 Q. Because as written, there is an aggregate cap of 250,000,  
25 correct?

N4J3USB2

Garg - Cross

1 A. Yeah, the aggregate cap should be 500,000.

2 Q. It should be. But as written, it's 250,000, correct?

3 A. Look, I'm not a lawyer. But my understanding from a  
4 businessperson's perspective is the aggregate cap was \$500,000.

5 Q. When the agreement here says the CDO shall pay to ARAM an  
6 aggregate amount of activist implementation fees equal to  
7 250,000, that's an aggregate cap, is it not?

8 A. No, because it says that when there is assets recovered.  
9 So, I think if you were to separate the two concepts, there is  
10 an asset recovery concept and then there is a do the work on  
11 the -- on the activist strategy concept.

12 Q. So you read this paragraph as giving the right to two  
13 separate fees of 250,000, correct?

14 A. That was the business intention.

15 Q. So, that was the business intention?

16 A. That's correct.

17 Q. And that's how you read this paragraph, correct?

18 A. I think the paragraph is poorly worded.

19 Q. And it's poorly worded because it says an aggregate fee of  
20 250,000, correct?

21 A. That's correct.

22 Q. So, going back to the month -- just focusing on the monthly  
23 activist implementation fee. If PRES works on a CUSIP for 25  
24 months?

25 A. Yup.

N4J3USB2

Garg - Cross

1 Q. It then cannot get any more monthly activist implementation  
2 fee for that CUSIP, correct?

3 A. That's correct.

4 Q. So, Phoenix had a system in place to track the CUSIPs,  
5 correct?

6 A. That's correct.

7 Q. When I say Phoenix, I mean PRES. You understand that?

8 A. Yeah.

9 Q. The person at PRES that tracked the CUSIPs was Dr. Tang,  
10 correct?

11 A. Yeah, and Ziggy did some of that too.

12 Q. Let's look at Exhibit 2045 which is in evidence, and that  
13 is tab 23.

14 A. Okay.

15 Q. Let's go -- first of all, this is an e-mail chain that  
16 begins on the third page, which is the Bates ending Khan381.

17 A. Okay.

18 Q. And you see that this is an e-mail from Mr. Priore to Edel  
19 Downey, and you are copied on the e-mail. Do you see that?

20 A. Yes.

21 Q. It is an e-mail written on August 16, 2013. Mr. Priore  
22 writes, "Edel, prior submission can you please confirm with  
23 Ming Sing and Vishal, both the present due diligence fee rate  
24 under the contract, and the bonds that remain in the two year  
25 due diligence period. The due diligence fee for each security

N4J3USB2

Garg - Cross

1 has a cap that is reached in approximately two years and we  
2 need to confirm which have reached that cap."

3 Do you see that?

4 A. Yup.

5 Q. Mr. Priore is referring to that activist implementation cap  
6 we just discussed, correct?

7 A. Well, a little bit because I don't know for sure, is he  
8 referring to the due diligence fee which was the two years and  
9 then it came down for another two years, came down to another  
10 two years, or is he referring to the activist implementation  
11 fee. Because I don't see activist implementation fee here.

12 Q. So let's go on with the e-mail. And up the chain  
13 Ms. Downey says to you, August 16, 2013, "Would you be able to  
14 look at the below query and advise."

15 Do you see that?

16 A. Yes.

17 Q. Just to go back to the due diligence fee. That due  
18 diligence fee was not per CUSIP, was it?

19 A. No.

20 Q. It was only the activist implementation fee that was based  
21 on CUSIPs?

22 A. Yes, but he is talking about per deal. So the due  
23 diligence fee was per deal.

24 Q. So --

25 A. So the e-mail is confusing.



N4J3USB2

Garg - Cross

1 Q. But my question to you is, the activist implementation fee  
2 is per CUSIP, correct?

3 A. That's correct.

4 Q. The diligence fee is not per CUSIP?

5 A. It's per deal.

6 Q. So, and after two years, the activist implementation fee  
7 reaches that cap per CUSIP, correct?

8 A. After 25 months.

9 Q. After 25 months, thank you. So two years and one month.  
10 So let's keep reading up the chain.

11 Dr. Tang writes to you, "Vishal, do you have an  
12 electronic copy of the monthly invoices going back? 17 of the  
13 30 currently active positions have and approval date prior to  
14 June 2011. There are nine RAST positions that we can rotate  
15 to. And I need to identify eight new positions. In addition,  
16 seven of the 30 current positions have an approval date of  
17 August 2011. We need to find replacement for them as well for  
18 next month's invoice."

19 Do you see that?

20 A. Yes.

21 Q. So now, and RAST is a reference to a CUSIP, correct?

22 A. RAST is a shelf. So, there's many CUSIPs under that shelf.

23 Q. So it is a reference to a shelf that has many CUSIPs under  
24 it?

25 A. Yeah.

N4J3USB2

Garg - Cross

1 Q. So, we keep going up the chain. And you write to Dr. Tang  
2 August 20, 2013, "Please send a summary removing the 17  
3 positions and putting on the nine new RAST positions."

4 Do you see that?

5 A. Yes.

6 Q. Then we keep going up the chain. It says, "Vishal, here is  
7 the new list with the following changes: 17 expired positions  
8 removed. 10 suspended positions added back. Seven RAST  
9 positions added. Let me know if you want to reconfigure the  
10 logic."

11 You see that?

12 A. Yup.

13 Q. We'll go up the chain. You write to Dr. Tang, again,  
14 August 23, 2013, "Please send an e-mail to me for Tom outlining  
15 the changes, and then a separate e-mail with recommendations  
16 for RAST and to turn on the positions on hold."

17 Correct?

18 A. Yup.

19 Q. Go up the chain. Dr. Tang now writes to you, "Vishal, let  
20 me know if the below narrative works for Tom's e-mail.

21 "Dear Tom, please be advised that 17 of the 30  
22 activist positions have reached the two year cap. We are  
23 removing them from the list of actively serviced positions. In  
24 their place we are adding back 10 suspended active positions as  
25 of January 2013, in light of the increased workload on

N4J3USB2

Garg - Cross

1 Countrywide related positions. These 10 positions were  
2 approved in September 2012. Separately, we are adding seven  
3 positions from the RAST shelf that Triaxx collectively has a  
4 high percentage of ownership of the RMBS trusts. These seven  
5 positions are also expected to have one of the highest  
6 potential loss severity. Both factors lend strong support for  
7 the recommendation of adding them to the activist list.  
8 Attached is a summary of the active positions we propose.  
9 Historical active positions are also included for your  
10 reference. Any questions or comments, please do get in touch."

11 Do you see that?

12 A. Yes.

13 Q. Now, when Dr. Tang refers to the two year cap for activist  
14 positions in the first sentence or the second sentence, an  
15 activist position, that refers to a security, correct?

16 A. Yes.

17 Q. So, the two year cap there refers to the activist  
18 implementation fee, correct?

19 A. In this case, yes.

20 Q. So now, let's go back to Dr. Tang's e-mail on the second  
21 page, August 20, at 8:34 in the morning. And he says in the  
22 second sentence I already read to you, "There are nine RAST  
23 positions that we can rotate to, and I need to find eight new  
24 positions."

25 This e-mail shows that PRES was rotating positions

N4J3USB2

Garg - Cross

1 when it reached the activist implementation cap, correct?

2 A. What do you mean by rotating positions?

3 Q. Well, you see the e-mail from Dr. Tang to you, correct, and  
4 it says "There are nine RAST positions that we can rotate to."

5 You see that, correct?

6 A. Right.

7 Q. Now, in the e-mail above, you say, "Please send a summary  
8 removing the 17 positions and putting on the nine new RAST  
9 positions."

10 Do you see that?

11 A. Yes.

12 Q. And you didn't write to Dr. Tang at the time, "I don't  
13 understand what you mean by rotate to," correct?

14 A. No, I was asking you what you -- but, anyway. I didn't ask  
15 him that, no. I didn't ask him that.

16 Q. Back to my question. Was PRES rotating securities when the  
17 activist implementation cap had been reached?

18 A. No, we were rotating the focus of our efforts. The way the  
19 actual -- aside from the legal agreement, the way things  
20 actually worked is we actually had to work on almost all of  
21 them, and we were working with law firms and those law firms  
22 would have demands. So if we were doing activist work, for  
23 instance, on a RAST deal, we would, you know, the contractual  
24 framework contemplated this clear delineation. But if a lawyer  
25 then asked us, you know, in month 26 of a deal that we had

N4J3USB2

Garg - Cross

1 worked on an activist implementation, that hey, Ziggy,  
2 Mingsung, can you run this analysis for me, I need the analysis  
3 on what the servicing damages are, we're not going to say no,  
4 we are not doing that for you because we are no longer being  
5 paid to do that work. We would do the work and move it along.

6 So, when they were in the activist phase, that was  
7 when we were doing, you know, we were rotating our efforts to  
8 them. But the way the actual work and the contract actually  
9 worked in real life was we were working on a lot of deals, even  
10 after their activist implementation phase had ended.

11 Q. So, in real life, even if the cap had been reached, but a  
12 law firm needed analysis on that position, you would continue  
13 with that activist phase, correct?

14 A. Yes. We continued to do the work. Partially because we  
15 were going to earn an incentive fee as well.

16 Q. Let's discuss another subject, Phoenix Holdco. So, Phoenix  
17 Holdco L.P. is the parent of Phoenix, correct?

18 A. Hmm-hmm.

19 Q. Of PRES?

20 A. Yes.

21 Q. And when money comes into PRES, PRES would first use that  
22 money to pay its expenses, correct?

23 A. That's correct.

24 Q. And, for example, one expense would be its subcontractors,  
25 correct?

N4J3USB2

Garg - Cross

1 A. That's correct.

2 Q. And Phoenix would also use the money that came in or PRES  
3 would use the money that came in to pay discretionary bonuses,  
4 correct?

5 A. That's correct.

6 Q. It would pay discretionary bonuses to the people who  
7 performed work for PRES, correct?

8 A. That's correct.

9 Q. So it would pay discretionary bonuses to Dr. Tang?

10 A. Correct.

11 Q. To Mr. Jonsson?

12 A. That's correct.

13 Q. To Mr. Savino, correct?

14 A. That's correct.

15 Q. And then if Phoenix had a surplus of money, you would  
16 determine whether that was dividended up to Phoenix Holdco,  
17 correct?

18 A. Myself and Raja.

19 Q. That's Mr. Visweswaran?

20 A. Yes.

21 Q. You would determine whether that money went up to Phoenix  
22 Holdco, correct?

23 A. That's correct.

24 Q. And if it was a Phoenix Holdco, that money would then go to  
25 the limited partners, correct?

N4J3USB2

Garg - Cross

1 A. Yes, up to the point that they had been fully repaid.

2 Q. And you were one of the limited partners, correct?

3 A. I was one of the limited partners indirectly, yes.

4 Q. And the limited partners, as you said, get their investment  
5 back first, correct?

6 A. That's correct.

7 Q. And they also get an 8 percent preferred return, correct?

8 A. That's correct.

9 Q. And then after that, the limited partners also get  
10 25 percent of the money that comes into Phoenix Holdco.

11 A. Of any excess profits, yes.

12 Q. And then the general partner gets 75 percent of the money,  
13 correct?

14 A. Yes.

15 Q. So then, that would go up that money would go up to Phoenix  
16 Cayman Limited, correct?

17 A. The distribution to the general partner would, yes.

18 Q. The distribution to the general partner would go to Phoenix  
19 Cayman?

20 A. Yes.

21 Q. And then from there, that money would go to Asian Castle,  
22 correct?

23 A. If there was any distribution decided at Phoenix Cayman.

24 Q. You were also an owner of Asian Castle, correct?

25 A. I am.

N4J3USB2

Garg - Cross

1 Q. And Phoenix Cayman could also make distributions, correct?

2 A. It had expenses and it could make distributions.

3 Q. And you and Mr. Visweswaran would decide what distributions  
4 Phoenix Cayman made, correct?

5 A. That's correct.

6 THE COURT: May I make a request, Mr. Savla?

7 MR. SAVLA: Of course.

8 THE COURT: Mr. Garg previously testified I believe  
9 that there were four shareholders in Asian capital of which he  
10 was one. Could you ask him the percentages?

11 MR. SAVLA: Of course.

12 Q. So, I believe the entity is Asian Castle.

13 A. That's correct.

14 Q. What are the percentages of interests that the partners  
15 have in Asian Castle?

16 A. 25 percent each, with respect to the economic interests.

17 Q. Let's go to Exhibit 40, which is tab 24. And this is  
18 Triaxx's interrogatory responses which are in evidence. And  
19 I'd like to direct you to page four of the responses.

20 First of all, you've seen these, this interrogatory  
21 response before, correct?

22 A. I believe so.

23 Q. So now, let's look at this 11/25/14 entry for ARAM Phoenix  
24 Real Estate Solutions limited. And that's for 11.75 million.

25 A. Hmm-hmm.



N4J3USB2

Garg - Cross

1 Q. And bonus payments were made out of this -- first of all,  
2 these are amounts that were disbursed from accounts held or  
3 controlled by the Miller & Wrubel law firm. Do you see that at  
4 the top?

5 A. Yeah, they were paid by Miller Wrubel.

6 Q. When we go to the 11.75 million, bonus payments were made  
7 paid out of that 11.75 million, correct?

8 A. That's correct.

9 Q. They were paid to Mr. Jonsson?

10 A. I believe so, yes.

11 Q. Dr. Tang?

12 A. Yes.

13 Q. And Mr. Visweswaran, correct?

14 A. I don't remember specifically, but I believe that that's  
15 correct.

16 Q. And these bonus payments from the 11.75 million, they were  
17 made by the PRES or Phoenix Advisors & Managers U.S.A.,  
18 correct?

19 A. That's correct.

20 Q. And we've discussed the flow of funds from PRES to Phoenix  
21 Holdco. Would it be fair to say that the 11.75 million  
22 followed that flow of funds?

23 A. Not exactly. Because at that moment in time, HSBC had shut  
24 down their operations in the Cayman Islands, so, therefore, the  
25 money had to be kept in escrow accounts until Phoenix could

N4J3USB2

Garg - Cross

1 open up accounts at CIBC. So the flow of funds you referred to  
2 in principle flowed that way, and that was the economic goal.  
3 But in practice, there were escrow accounts in the middle.

4 Q. Then, we see other payments on this chart to PRES. So if  
5 you go down a few rows, you see a payment on 10/26/15?

6 A. Yup.

7 Q. So, bonus payments were made out of that sum, correct?

8 A. I don't recall.

9 Q. Is it fair to say that Phoenix Holdco has given 12 million  
10 or more in distributions to its limited partners?

11 A. That number sounds right.

12 Q. Again, you were one of the limited partners of Phoenix  
13 holding?

14 A. Indirectly, yes.

15 MR. SAVLA: Thank you. I don't have any other  
16 questions.

17 THE COURT: Thank you very much. We have about  
18 another half an hour before our lunch break. Who will be  
19 examining the witness next?

20 MS. BUCKEL: I believe I will, your Honor.

21 THE COURT: Are you ready to go?

22 MS. BUCKEL: If I could have a second or so.

23 THE COURT: I will give you several seconds, and  
24 Ms. Buckel, you may proceed when you're ready.

25 Shall we set aside the prior witness binder?

N4J3USB2

Garg - Cross

1 MS. BUCKEL: For the most part, yes.

2 THE COURT: Don't set it too far aside, Mr. Garg.

3 MS. BUCKEL: Permission to approach the bench and the  
4 witness with exhibit binders.

5 THE COURT: You may step forward.

6 CROSS-EXAMINATION

7 BY MS. BUCKEL:

8 Q. Good morning, Mr. Garg. My name is Elizabeth Buckel and I  
9 represent the Trustee U.S. Bank National Association in this  
10 matter. I'm going to ask you some additional questions.

11 Please bear with me if any of them are a bit repetitive of the  
12 previous questions you have been asked, but I promise I have a  
13 point, and there will be some different questions in there as  
14 well.

15 Can you please turn to tab 1 which is Exhibit 1145  
16 that is not yet admitted into evidence. You'll see this is an  
17 e-mail from Mr. Calamari to Ms. Siddiq?

18 A. Hmm-hmm.

19 Q. 2017, there is two attachments to this e-mail. One is a  
20 2017 TAM annual holdings report, and the TAM annual holdings  
21 report in 2016. Is that correct?

22 A. Yeah.

23 Q. If you turn the page, we are going to focus on the  
24 January 17 annual holdings report.

25 Do you recognize this, Mr. Garg?

N4J3USB2

Garg - Cross

1 A. I believe I've seen some version of it in the past.

2 Q. You were involved in the preparation of this document,  
3 correct?

4 A. No, I wasn't involved in making the document.

5 Q. Let's look at your deposition testimony.

6 Tom, can you please play Mr. Garg's deposition at page  
7 24, lines 3 to 5. We can also look at it if we want more  
8 context.

9 Mr. Garg, do you see we are discussing this document  
10 in the first heading Vishal Garg Equity Holdings. Does that  
11 look like we are discussing same document in your deposition?

12 A. Yes.

13 Q. If you go down to page 24, at line 3, you were asked:

14 "Q. Why you involved in the preparation of this document?"

15 Is that correct?

16 A. Probably yes.

17 Q. Your answer was "probably, yes." Does that refresh your  
18 recollection?

19 A. Yes. But if you keep going, you'll see the rest of the  
20 context in line 6 through 16. So I wasn't involved in the  
21 direct creation of this document, which is the question you  
22 asked me. But there is a spreadsheet that I have that I try  
23 to, like, look at, which has got all my shareholdings and all  
24 these different things. So I try when I invest in the next  
25 thing or something like that, then we try to keep that updated.

N4J3USB2

Garg - Cross

1 Q. Fair enough. Let me ask you another question. Do you have  
2 any reason to doubt the accuracy of this document?

3 A. On the as of date, no.

4 THE COURT: "This document," Ms. Buckel, meaning  
5 Exhibit 1145?

6 MS. BUCKEL: Correct, yes.

7 THE COURT: Thank you.

8 A. Yeah, no.

9 MS. BUCKEL: Your Honor, I would like to move Exhibit  
10 1145 into evidence.

11 THE COURT: Any objection?

12 MS. BEAUMONT: We would object. It is hearsay and a  
13 number of witnesses testified it was not actually totally  
14 accurate. And we don't have a witness who was involved in  
15 actually preparing it or there is no business records.  
16 Foundation.

17 THE COURT: Objection overruled. The exhibit is  
18 admitted.

19 (Joint Exhibit 1145 received in evidence)

20 Q. So Mr. Garg, this document shows the equity holdings of  
21 various individuals, including yourself and Mr. Calamari. Is  
22 that correct?

23 A. Yes.

24 Q. Looking at this list, do you personally believe that this  
25 listing was accurate as of the date listed here, January 2017?

N4J3USB2

Garg - Cross

1 A. Probably so, yes.

2 Q. And the first list is your direct ownership and indirect  
3 ownership, correct?

4 A. Hmm-hmm.

5 Q. And in your direct -- according to this document, you  
6 directly owned 99 percent of 1/0 Capital LLC?

7 A. Yes.

8 Q. 65 percent of 1/0 Holdco LLC. 80 percent of 1/0 Holdco II  
9 LLC. And 65 percent of 1/0 Capital Limited?

10 A. Yes, that's correct.

11 Q. Here it shows you directly own 37 percent of Asian Castle,  
12 correct?

13 A. That's what it says, yes.

14 Q. But you previously testified that you believed this amount  
15 was closer to 25 percent?

16 A. I think so.

17 Q. Is that current, 25 percent?

18 A. I think it was 25 percent for the period that Mr. Savla was  
19 asking the question. I think it went up afterwards, because I  
20 purchased certain economic interests in Asian Castle.

21 Q. Do you know how much you own in Asian Castle today?

22 A. Honestly, ma'am, I think the number is -- of the economic  
23 interests, not of the actual shareholding, which may be part of  
24 the thing, because there are two classes of shares in Asian  
25 Castle. There is a class A share and a class B share. But of

N4J3USB2

Garg - Cross

1 the economic interest, I believe I own 50 percent.

2 Q. Isn't it true that Mike Balboa, who you spoke of earlier,  
3 used to be a holder of equity in Asian Castle but you purchased  
4 his stake in 2019?

5 A. That's correct.

6 Q. Looking back to this exhibit. You have a 55 percent share  
7 of Triaxx Holdco, correct?

8 A. That's correct.

9 Q. Do you have a number of indirect holdings, including in  
10 Better Mortgage, Phoenix Advisors & Managers U.S.A. LLC, and  
11 The Number LLC, correct?

12 A. That's correct.

13 Q. I'd like to direct you to tab 2 which is Exhibit 1185. And  
14 I'll represent this is just a different exhibit of the same  
15 document you have looked at previously.

16 MS. BUCKEL: Your Honor, this is already admitted into  
17 evidence.

18 A. Hmm-hmm.

19 Q. Mr. Garg, do you find this 1/0 Holdco organizational chart  
20 on the back of the Triaxx PRES and 1/0 Capital organizational  
21 charts to be generally accurate?

22 A. Yes.

23 Q. Let's start actually on first page with 1/0 Holdco LLC  
24 which is up top. Pursuant to this chart, 1/0 Holdco LLC owns  
25 62 percent of The Number, correct?

N4J3USB2

Garg - Cross

1 A. That's correct.

2 Q. And you are an indirect holder of The Number?

3 A. Through 1/0 Holdco LLC.

4 Q. What is The Number LLC?

5 A. The Number is a data analytics company.

6 Q. Was it used by Phoenix -- we'll call it PRES. Was it used  
7 by PRES?

8 A. It was used by PRES.

9 Q. And The Number LLC is the parent of Phoenix Advisors &  
10 Managers U.S.A. LLC?

11 A. That's correct.

12 Q. There is just a typo on this chart. It should be Phoenix  
13 Advisors & Managers U.S.A. LLC?

14 A. That's correct, yes.

15 Q. You are an indirect holder of Phoenix Advisors & Managers  
16 U.S.A. LLC?

17 A. That's correct.

18 Q. I think we went through this before. But for the record,  
19 what is Phoenix Advisors & Managers U.S.A. LLC?

20 A. A data analytics and consulting company that focuses on  
21 providing data analytics, consulting, expert witness services  
22 to many of the largest hedge funds and asset managers in the  
23 world. Mostly its primary business was around mortgage backed  
24 securities analysis.

25 Q. You previously testified that Phoenix Advisors & Managers



N4J3USB2

Garg - Cross

1 Limited contracted with Phoenix Advisors & Managers U.S.A. LLC  
2 for data analytics, correct?

3 A. That's correct.

4 Q. Let's turn to that second page which is titled Triaxx PRES  
5 and 1/0 Capital organizational charts, which I believe we saw  
6 before. And I hope your copy is in color.

7 If you look at the chart on the right, which is in  
8 green. At the top it says 1/0 Capital Limited, correct?

9 A. That's correct.

10 Q. And it shows that it is owned by yourself and Nicholas  
11 Calamari and 11 others, right?

12 A. That's correct.

13 Q. And you previously testified that you have a 65 percent  
14 stake in 1/0 Capital Limited, correct?

15 A. Yeah, at the time. It might be lower now.

16 Q. And then we see here again, we went through this, but just  
17 for the record, Asian capital is listed at the top of the  
18 purple chart, correct?

19 A. That's correct.

20 Q. And yourself, Raza Khan, Raja Visweswaran, and one other  
21 was the owner of Asian Castle, correct?

22 A. Of the economic interests.

23 Q. Was that one other Mr. Balboa?

24 A. Yes.

25 Q. Now it's just you three?

N4J3USB2

Garg - Cross

1 A. Yes.

2 Q. But you just testified you have a 50 percent interest in  
3 Asian Castle now?

4 A. Yeah, so I bought, as you said, in 2019, I bought  
5 Mr. Balboa's economic interest.

6 Q. Below Asian capital is Phoenix Cayman Limited, and Phoenix  
7 Cayman Limited was also created around March 2011; is that  
8 right?

9 A. That's correct.

10 Q. And Phoenix Cayman limited is the general partner of  
11 Phoenix Holdco L.P., correct?

12 A. Yes.

13 Q. Can you talk to me to more about what Phoenix Holdco L.P.  
14 is?

15 A. It is a holding company. And it was a vehicle by which we  
16 raised -- it is a partnership amongst myself and I think almost  
17 about 10 other limited partners for capital that we used to do  
18 RMBS workouts.

19 Q. Is it correct you raised about \$5 million from the limited  
20 partners, including yourself?

21 A. Yes.

22 Q. Was Phoenix Holdco created on or about the March 2011 time  
23 frame?

24 A. Yeah, I think it was about just a little bit earlier.

25 Q. In this chart, on the limited partners portion, it says you

N4J3USB2

Garg - Cross

1 own 11 percent of that?

2 A. Yes, indirectly.

3 Q. And the other HNWI owns 89 percent?

4 A. Yes.

5 Q. And that means high net worth individuals, correct?

6 A. Yes.

7 Q. Are those the individuals who contributed the 5 million to  
8 help to start Phoenix Holdco?

9 A. Yes.

10 THE COURT: Ms. Buckel, excuse me for interrupting. I  
11 just want a little bit of clarity here. Could you ask the  
12 witness whether he personally contributed capital at that  
13 limited partner raise or whether only the other high net worth  
14 individuals contributed capital?

15 MS. BUCKEL: Yes, your Honor.

16 Q. Mr. Garg, at this point in time when you raised \$5 million  
17 for Phoenix Holdco, did you contribute any capital to that?

18 A. Yes, I did.

19 Q. Do you know how much capital you contributed?

20 A. I think it was 500K. \$500,000, sorry.

21 Q. Understood. Looking back at this chart, in the left most  
22 at the top we have Triaxx Holdco LLC. Correct?

23 A. Yes.

24 Q. Which owns Triaxx Asset Management LLC?

25 A. Yes.

N4J3USB2

Garg - Cross

1 Q. And you are a 55 percent owner of Triaxx Holdco LLC?

2 A. Yes.

3 Q. And Mr. Calamari is the 45 percent owner, correct?

4 A. Yes.

5 Q. Let's turn to tab 3 which is Exhibit 10. This is another  
6 version, I will represent to you, this is another copy of the  
7 engagement agreement we've been looking at.

8 THE COURT: This is the engagement letter for 2006-1.

9 MS. BUCKEL: Correct, your Honor.

10 Q. As Mr. Savla said before, there's minor differences, but  
11 they are materially identical across the three CDOs; is that  
12 your recollection, Mr. Garg?

13 A. Yes.

14 Q. Mr. Garg, you previously testified about this engagement  
15 agreement, correct?

16 A. I have.

17 Q. And PRES was created for the purpose of entering into the  
18 engagement agreement with the Triaxx CDOs, correct?

19 A. That's correct.

20 Q. So if we turn to page 8 of the engagement agreement which  
21 ends with the Bates stamp 4162.

22 A. Hmm-hmm.

23 Q. And you look at (iv), it states "This agreement shall be  
24 capable of amendment or variation only by agreement in writing  
25 between each of the parties hereto."

N4J3USB2

Garg - Cross

1 Is that correct?

2 A. That's correct.

3 Q. You testified that the engagement agreements set out the  
4 fees that PRES would receive for its work, correct?

5 A. That's correct.

6 Q. I believe Mr. Savla did a fantastic job going through those  
7 fees in detail. But, I want to talk about the diligence fees.  
8 Those diligence fees were intended to cover PRES' out-of-pocket  
9 costs like contracts with data vendors; is that correct?

10 A. I think that wasn't -- that wasn't the sole scope of it,  
11 but yes.

12 Q. Can we put up on the screen paragraph 32 of Mr. Garg's  
13 declaration. In paragraph 32 you state, "The diligence fees  
14 were intended to cover PRES' out-of-pocket costs in gearing up  
15 to do their work for the Triaxx CDOs."

16 Is that correct?

17 A. Yes, that's correct.

18 Q. What are the out-of-pocket costs this is referring to?

19 A. You have to buy computers, servers, you have to plug into  
20 the APIs that various data vendors have. You have to have  
21 legal fees to cover the contracts with the data vendors, you  
22 have to create security architecture for consuming all of that  
23 consumer data that we were consuming that was used to match the  
24 mortgage backed securities with the individuals who were  
25 residing in there. The appraisal data we were buying. So

N4J3USB2

Garg - Cross

1 there was a lot of stuff.

2 Q. Understood. And for the non-technologically competent like  
3 myself, what does API stand for?

4 A. Application programming interface.

5 Q. Thank you. You also testified in your direct, moving on to  
6 the incentive fee, that the incentive fee could be recovered in  
7 multiple different ways; is this right?

8 A. The incentive fee could be earned in --

9 Q. Earned, yes.

10 A. Yes.

11 Q. So first, it could be covered as the Triaxx CDOs recovered  
12 directly through litigation with RMBS trustees, originators,  
13 servicers, the damages that they had caused the CDOs; is that  
14 correct?

15 A. That's correct.

16 Q. And you would refer to this as your activist implementation  
17 strategy?

18 A. That wasn't just all of it. That was a piece of it.

19 Q. Just a piece of it. Okay. But second Phoenix could  
20 receive an incentive fee if the RMBS deals held by the Triaxx  
21 CDOs themselves recovered moneys in, and those moneys flowed  
22 through the CDOs, correct?

23 A. That's correct.

24 Q. So even if the RMBS deals recovered moneys because, for  
25 example, generally improving market conditions from the depths

N4J3USB2

Garg - Cross

1 of the financial crisis to 2016, 2017, rather than Phoenix's  
2 work specifically, Phoenix would still be entitled to receive  
3 incentive fees; is that correct?

4 A. No, that's not actually correct. Because we would have had  
5 to do something to have triggered those fees. So if, for  
6 instance, we were pressuring a servicer to improve their  
7 servicing standards, or part of a group of investors that were  
8 negotiating a new set of servicing standards, and then through  
9 the implementation of those servicing standards the actual  
10 performance of the deals improved, then that would trigger an  
11 incentive fee.

12 In general, market conditions improved during the  
13 depths of the credit crisis. So we didn't earn more fees just  
14 because the market price of the bonds and the CDO deals went  
15 up. So that's an example where we didn't --

16 Q. Can you say that last part again. You wouldn't recover  
17 more fees?

18 A. So, for instance, there were bonds that were in the CDO  
19 deals that when we started working on them, let's say were  
20 trading at 40 cents on the dollar. Then, later on they were  
21 liquidated as part of the disposition of the securities, and  
22 let's say they were disposed for at 70 cents on the dollar.

23 If we didn't do work on those bonds, we didn't earn --  
24 we didn't earn a fee. And if we did do work and that work  
25 didn't improve the performance of those deals, if the

N4J3USB2

Garg - Cross

1 performance stayed the same, but just the market price went up,  
2 we wouldn't earn those fees.

3 Q. So, is it your testimony you would only do -- you only  
4 earned fees on the work that you did for the specific RMBS  
5 security?

6 A. Right. Or if we engaged in litigation and we got a broad  
7 based settlement against a whole list of RMBS securities.

8 Q. I may go back to this in a second. I want to go back to  
9 your declaration which you had multiple different ways stated  
10 how Phoenix could earn fees.

11 We have litigation over here. I just asked you about  
12 that second part which we'll come back to.

13 But the third part was if Phoenix compelled action at  
14 a servicer, and the servicer improved performance and the RMBS  
15 deal went up, Phoenix could be entitled to incentive fees,  
16 right?

17 A. That's correct, that's correct.

18 Q. Is that statement different than what you just described to  
19 me?

20 A. Yes, because one is if you are compelling an action at the  
21 servicer level, and then the deal's performance is improving.  
22 Versus if the deal's market price is improving.

23 Q. Phoenix did work to understand how the market price is  
24 improving in the second tranche we were just talking about?

25 A. Yeah, we would track the market prices of the bonds, and we



N4J3USB2

Garg - Cross

1 would, in general, we were tracking the market prices of the  
2 bonds that were inside the underlying CDO deals.

3 Q. What I'm trying to understand in this second category, what  
4 exactly did Phoenix do and how did Phoenix evidence that its  
5 work improved the market price of the bond?

6 A. No. When Phoenix didn't -- when the market price of the  
7 bond improved and Phoenix didn't do anything, Phoenix didn't  
8 get paid a fee is what I am saying.

9 If Phoenix did something, and the deals underlying  
10 performance improved, meaning that the people who had the loans  
11 in those mortgage backed securities deals, they started paying  
12 at a better rate, or they started curing, then Phoenix would be  
13 entitled to a payment.

14 Q. Understood. And Phoenix tracked all that, correct?

15 A. We would track that, yes.

16 Q. Were there any CUSIPs that Phoenix did not work on?

17 A. I think there were a bunch, yes.

18 Q. In terms of the -- can we talk percentages of the Triaxx  
19 CDOs?

20 A. Well, you have to understand that the Triaxx CDOs were  
21 entirely composed of what were called Alt A. Prime origination  
22 and Alt A was low documentation or no documentation loans.  
23 Created during 2005, 6, 7. So the bulk of the loans in the  
24 Triaxx -- the bulk of the loans in the residential mortgage  
25 backed securities that were in the Triaxx CDOs were in some

N4J3USB2

Garg - Cross

1 way, shape or form faulty or had been originated to poor  
2 standards. So, there were some deals that we didn't do work  
3 on. I think there were some Wells Fargo trusts that we didn't  
4 do any work on. Because Wells Fargo at that time was generally  
5 known to have originated good collateral. So I think there was  
6 some -- so I think that is a good example of a set of deals we  
7 didn't do work on.

8 Q. Would it be fair to say you did work on a majority of the  
9 deals in the Triaxx?

10 A. Yes, that would be very fair.

11 Q. 75 percent of the deals in the Triaxx CDOs?

12 A. I think 75 percent is probably the right number.

13 Q. Any higher than that?

14 A. I'm not sure.

15 Q. It could be higher than that?

16 A. It could be higher than that.

17 Q. Understood.

18 I just turned my page and I realize I left out the  
19 last category you listed.

20 Phoenix could receive an incentive fee if it was a  
21 member of a class of investors who brought an action against  
22 issuers or servicers, correct?

23 A. That's correct.

24 THE COURT: May I just interject for clarification.

25 Mr. Garg, you said it was fair to say that you worked on more

N4J3USB2

Garg - Cross

1 than 75 percent of the deals.

2 THE WITNESS: I think 75 percent is the right number.  
3 It could be more than 75 percent.

4 THE COURT: That's not what I am focusing on. I want  
5 to be clear when you say the CUSIPs, the RMBS securities?

6 THE WITNESS: You are totally right.

7 THE COURT: Thank you.

8 Q. In this last category, Mr. Garg, is it fair that if the  
9 Triaxx CDOs received money as part of a class, in a class  
10 action, based on actions of other counsel, and not Phoenix or  
11 TAM's counsel, would Phoenix still be entitled to incentive  
12 fees?

13 A. If we didn't do any work on it, that would be different.  
14 But if it was -- if we were part of the group or we had moved  
15 the group along, provided data analytics to the group or things  
16 like that, then it would be fair to earn a fee.

17 Q. So your testimony is that if the Triaxx CDOs were part of a  
18 class action?

19 A. Yes.

20 Q. Where counsel for Phoenix or counsel for TAM did absolutely  
21 no work in that class action, Phoenix would not be entitled to  
22 incentive fees?

23 MS. BEAUMONT: Objection.

24 A. If they did no work whatsoever, no.

25 THE COURT: Let me hear the question back, please.

N4J3USB2

Garg - Cross

1 (The record was read)

2 MS. BEAUMONT: I not sure what they mean counsel for  
3 Phoenix and counsel for TAM in that situation.

4 THE COURT: Okay.

5 MS. BUCKEL: I'll amend my question.

6 THE COURT: Rephrase, please.

7 Q. If there is a class action, and the Triaxx CDOs did not opt  
8 out of that class action, and the Triaxx CDOs' counsel or  
9 the -- the collateral manager's counsel or the issuer's counsel  
10 or Phoenix did not do any work related to that litigation,  
11 Phoenix would not be eligible to earn any fee for that action?

12 A. I would like to say yes, but that's not the practical  
13 reality of things. The practical reality of things were, was  
14 that there were these class action suits that were taking  
15 place. And we, in some cases, we were signing up for those  
16 class action suits, and in other cases we were opting out of  
17 those class action suits. "We" meaning Triaxx in this case.  
18 Triaxx was opting out of those class action suits, because it  
19 was saying those class action suits were deficient in the  
20 amount of money they were seeking for damages or their  
21 allocation methodologies were deficient.

22 So, in the case of Res Cap for instance, we directly  
23 challenged the -- we were pro the class action suit, but we  
24 directly challenged the methodology. We got the methodology to  
25 change, we got the methodology changed, and that benefited the

N4J3USB2

Garg - Cross

1 trusts. And so, in that instance, we of course deserved to get  
2 paid a fee, even if we were not part of the class action.

3 Q. Mr. Garg, that wasn't my question. My question is if TAM's  
4 counsel, the issuer's counsel, or Phoenix did not do any work  
5 related to the class action, Phoenix did not earn incentive  
6 fees, correct?

7 A. Yes. If we did no work, then we didn't earn incentive  
8 fees.

9 Q. Let's look back at the engagement agreements which I  
10 believe we have open in tab 3 on the page that ends in 4167. I  
11 believe we've looked at this paragraph and at the bottom in  
12 paragraph D.

13 THE COURT: We're on Bates number?

14 MS. BUCKEL: 4166. Or 4167.

15 Q. In the bottom of that paragraph it says, "Provided that the  
16 value as determined by the CDO in its sole discretion or the  
17 collateral manager on its behalf of funds or assets recovered  
18 by the CDO relating to a security exceeds \$500,000, the CDO  
19 shall pay to ARAM an aggregate amount of activist  
20 implementation fees in respect of such security taking into  
21 account any activist implementation fees paid by the CDO to  
22 ARAM on or prior to such date of determination equal to  
23 \$250,000 irrespective of when that date of recovery may occur."

24 Is that correct?

25 A. This was further clarified later. But yes.

N4J3USB2

Garg - Cross

1 Q. My focus is in the phrase it says "provided the value as  
2 determined by the CDO in its sole discretion or the collateral  
3 manager on its behalf."

4 So does this phrase mean that the collateral manager,  
5 it's within the collateral manager's sole discretion whether a  
6 recovery exceeds \$500,000, correct?

7 A. It is.

8 Q. So there's no limits on this discretion?

9 MS. BEAUMONT: Objection.

10 A. I don't understand --

11 THE COURT: I'll allow the question.

12 A. What do you mean by there are no limits?

13 Q. This paragraph and the rest of this agreement provides no  
14 limits on the collateral manager's discretion to determine  
15 whether a recovery exceeds \$500,000; is that right?

16 A. Yeah, either the CDO or the collateral manager have the  
17 discretion to determine whether they pay us, whether we are  
18 owed an activist fee or not.

19 Q. You testified in your declaration in paragraph 34 that the  
20 parties understood that recoveries might be generated in a form  
21 that was not expected, and under those circumstances, PRES  
22 would still be entitled to be compensated as set forth in the  
23 engagement agreements. Is that correct?

24 A. That's correct.

25 Q. So, Phoenix then solely relied on the collateral manager's

N4J3USB2

Garg - Cross

1 discretion as to what would constitute whether a recovery  
2 exceeds \$500,000, correct?

3 A. Yes.

4 Q. As you testified before, the engagement letters lay out  
5 exactly how Phoenix was to be paid, correct?

6 A. The engagement letters set out, yeah.

7 Q. The engagement agreements.

8 A. Yeah.

9 THE COURT: I see that it is 12:29. Let me know when  
10 you get to a good stopping point.

11 MS. BUCKEL: This would be a good stopping point, your  
12 Honor.

13 THE COURT: I have a nagging question. Will you  
14 permit me to interrupt your examination and ask it before we  
15 break for lunch?

16 MS. BUCKEL: Yes, your Honor.

17 THE COURT: Thank you.

18 Mr. Garg, you previously testified that as you read or  
19 as you intended the activist implementation fee provision to be  
20 applied, we were just looking at that a moment ago.

21 THE WITNESS: Hmm-hmm.

22 THE COURT: On page 12 of Exhibit 10.

23 THE WITNESS: Yeah.

24 THE COURT: You testified that you understood there to  
25 be in effect two separate \$250,000 caps.

N4J3USB2

Garg - Cross

1 THE WITNESS: Yes.

2 THE COURT: One for the monthly fee portion of the  
3 activist implementation fee, which would be hit at 25 months.

4 THE WITNESS: Yes.

5 THE COURT: And one for what I think you referred to  
6 at one point as the incentive fee.

7 THE WITNESS: That's correct.

8 THE COURT: Which was contingent upon the security  
9 having increased in value by \$500,000 or more.

10 THE WITNESS: That's correct.

11 THE COURT: Which, as we just heard, that  
12 determination could be made at the sole discretion of the  
13 collateral manager on behalf of the CDO, correct?

14 THE WITNESS: That's correct.

15 THE COURT: All right. So if I'm doing the math  
16 correctly, it would be possible under the structure you just  
17 described for PRES to work on a security for 25 months.

18 THE WITNESS: Hmm-hmm.

19 THE COURT: Entitling it to \$250,000. And for that  
20 security then to increase in value or be deemed to have  
21 increased in value by \$501,000, which would entitle PRES to  
22 another 250,000, and in that hypothetical, you would be paid  
23 \$500,000 for a security which had improved in value in the  
24 estimation of the collateral manager which was owned by you and  
25 Mr. Calamari, 500 out of those \$501,000.



N4J3USB2

Garg - Cross

1 THE WITNESS: You're right. In that specific  
2 instance, it could be possible for that to be true.

3 THE COURT: Thank you.

4 We'll take an hour. We'll try to get back at 1:30.  
5 Mr. Garg, you will remain under oath when you return, and you  
6 are not to discuss your testimony or the underlying facts with  
7 your counsel or with others during the lunch break. We'll be  
8 in recess.

9 (Recess)

10 (Continued on next page)

N4JKUSB3

Garg - Cross

## AFTERNOON SESSION

1:35 PM

(In open court; trial resumed; case called)

THE COURT: Ms. Buckel, you may continue.

Mr. Garg, you are still under oath.

THE WITNESS: Thank you.

VISHAL GARG,

CROSS-EXAMINATION CONTINUED

BY MS. BUCKEL:

Q. Good afternoon, Mr. Garg. Prior to the break, we were talking about the engagement agreements and all the fees owed thereunder.

Do you remember that?

A. Yes.

Q. Is it your testimony that the engagement agreements lay out how the fees are to be paid?

A. In most cases, yeah.

Q. What do you mean by "in most cases"?

A. Well, we've identified there have been some errors in some of the engagement agreements and some of the way the wording has come in.

Q. Fair enough. That's in your previous testimony.

And you understand, Mr. Garg, that each of the three Triaxx CDOs has caps in the amount of administrative expenses that can be paid each month; is that correct?

N4JKUSB3

Garg - Cross

1 A. There are, yes.

2 Q. Did you have this understanding in 2011, when the  
3 engagement agreements were entered into?

4 A. I had some understanding of it, yes.

5 Q. Wasn't it your previous testimony that when Phoenix or  
6 PRES, ARAM, was looking to purchase ICP in 2010, that you  
7 reviewed the indentures for each of the --

8 A. I did.

9 Q. And the indentures lay out the caps and administrative  
10 expenses?

11 A. They do.

12 Q. So it's fair to say that you had understood that there were  
13 caps in the administrative expenses for each of the three CDOs  
14 in 2011?

15 A. Oh, yeah, yeah. In broad terms, yes.

16 Q. Is it your understanding that from 2011 to 2018, PRES's  
17 fees were paid as an administrative expense under the  
18 indenture?

19 A. Yes.

20 Q. I believe you testified previously about some subcontracts.  
21 I want to briefly go back over those.

22 Just to confirm, PRES did not have any other clients  
23 other than the Triaxx CDOs, right?

24 A. PRES did not.

25 Q. And PRES subcontracted its work, right?

N4JKUSB3

Garg - Cross

1 A. It did.

2 Q. So around the time of the engagement agreements, PRES had a  
3 subcontract lined up with an entity called Activist Special  
4 Advisory Services, correct?

5 A. That's correct.

6 Q. Let's look at tab 4, which is Exhibit 1048.

7 MS. BUCKEL: I will represent to the Court that this  
8 is not admitted, and there are multiple tabs. We divided up  
9 the agreements and the attachments in this tab.

10 But this is a copy of an agreement that was previously  
11 admitted into evidence by Mr. Savla, and I would ask the Court  
12 to admit this identical document into evidence.

13 THE COURT: Hold on. Now I'm confused. All of this  
14 is 1048, but you've inserted tabs because it has?

15 MS. BUCKEL: To divide the different agreements to  
16 make it easier to reference.

17 THE COURT: Did I previously admit all of 1048?

18 MS. BUCKEL: You have admitted the agreements at 1048.

19 THE COURT: I admitted the agreements. What about the  
20 cover email?

21 MS. BUCKEL: I believe it's the same one, but I will  
22 authenticate that for the witness, just in case it's not.

23 THE COURT: I don't want you to have to go through the  
24 authentication drill if all of this is already in. I just  
25 can't tell as I sit here.

N4JKUSB3

Garg - Cross

1 MS. BUCKEL: I will do it, just in case, for the  
2 record.

3 THE COURT: It's a good practice.

4 BY MS. BUCKEL:

5 Q. Mr. Garg, under tab A, do you see that there is an email?

6 A. Yes.

7 Q. And it is from you to multiple different people - Michael  
8 Minehane?

9 A. Yes, Michael Minehane.

10 Q. And Raja and Suzanna M. at Schindlers.com; is that correct?

11 A. Yes.

12 Q. And there are multiple different attachments of the email.

13 Do you see that?

14 A. Yes.

15 Q. Do you have any doubt that you sent this email?

16 A. No.

17 MS. BUCKEL: I would ask the Court to admit  
18 Exhibit 1048 into evidence.

19 THE COURT: Including the attachments?

20 MS. BUCKEL: Including the attachments.

21 THE COURT: Any objections?

22 All right. 1048, including the attachments, is in. I  
23 will note for the record that the tabs, which have been  
24 thoughtfully placed in the witness binders by counsel, are not  
25 a part of the exhibit itself.

N4JKUSB3

Garg - Cross

1 (Trial Exhibit 1048 received in evidence)

2 BY MS. BUCKEL:

3 Q. Under tab -- what entity owned Activist?

4 A. EIFC.

5 Q. Is EIFC an acronym for something?

6 A. Education Investment and Finance Corporation.

7 Q. Was it your testimony that Activist provided PRES with data  
8 analytics to help identify loans that were improperly  
9 originated?

10 A. That was one of the things it did, yes.

11 Q. And you previously testified that you were one of two  
12 indirect owners of EIFC, correct?

13 A. That's correct.

14 Q. And you were an officer and director of EIFC, right?

15 A. That's correct.

16 Q. You may have said this, but Activist initially was created  
17 for the purpose of doing this work for PRES, right?

18 A. That's correct.

19 Q. And there was an amendment to the subcontract, right?

20 A. There was.

21 Q. If you look under tab B, it states, "The first amendment to  
22 subcontract agreement," correct?

23 A. Yes.

24 Q. If you look on page 1, which is the Bates number ending in  
25 644, it says that the amendment creates minimum monthly payment

N4JKUSB3

Garg - Cross

1 of \$235,000, correct?

2 A. That's correct.

3 Q. And this is inclusive of all three CDOs, correct?

4 A. Yes, for the work across all three CDOs.

5 Q. Isn't it true that you and Raja Visweswaran agreed on  
6 \$235,000 because it was a good number that made sense?

7 A. I'm sorry, are you quoting someone?

8 Q. Well, let's look at your deposition testimony.

9 MS. BUCKEL: Tom, can you put up Mr. Garg's  
10 deposition, at page 154, line 13, through 155, line 20.

11 Q. And this preliminary testimony is talking about the  
12 subcontract agreement, correct?

13 A. Uh-huh.

14 Q. If you look at the next page --

15 MS. BEAUMONT: I'm sorry, is this impeachment?

16 THE COURT: So far, the witness has not answered the  
17 question. He's merely asked if you're quoting someone.

18 Why don't you put the question to him first.

19 MS. BUCKEL: Yes.

20 BY MS. BUCKEL:

21 Q. Mr. Garg, why did you agree on \$235,000 as a minimum  
22 payment?

23 A. It was a close approximation of what it would cost to bear  
24 the costs for Activist.

25 Q. If we look at -- just to be clear, because I think you were

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Garg - Cross

1 a little unclear in your deposition -- at line 25 on page 154,  
2 you were asked:

3 "Q. Can you tell me about those negotiations for this  
4 contract?"

5 And your answer was: "They were relatively  
6 straightforward. The guys that were working on the data side  
7 were working really hard. They were burning the midnight oil.  
8 They needed more resources. They were spending more money,  
9 buying more data. And so we needed the deal recut. So I  
10 talked to Raja about it, and he said, look, what do you think  
11 is going to be the number? Also, it was hard because billing  
12 would go up, billing would come down, invoices would be due,  
13 all this sort of stuff. It was just very hard to keep going  
14 back and forth every 30 days. So we just looked at, like, what  
15 a good number that would make sense was, and we agreed on  
16 \$235,000, and that was it."

17 Do you see that?

18 MS. BEAUMONT: Objection.

19 THE COURT: Basis?

20 MS. BEAUMONT: This is not impeachment.

21 THE COURT: Are you offering this testimony as  
22 impeachment, or are you offering it as the testimony of a party  
23 opponent?

24 MS. BUCKEL: I was going to see if Mr. Garg had any  
25 better recollection of why \$235,000 was the number.



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Garg - Cross

1 THE COURT: All right. So, if you're offering it to  
2 refresh his recollection, rather than read it into the record,  
3 you can simply ask the witness to read it himself. So make up  
4 your mind.

5 MS. BUCKEL: We'll offer it to have the witness  
6 refresh his recollection.

7 THE COURT: All right.

8 So would you read those lines to yourself, Mr. Garg,  
9 and then Ms. Buckel will have a question for you.

10 BY MS. BUCKEL:

11 Q. Mr. Garg, why did you and Mr. Visweswaran agree on  
12 \$235,000?

13 A. We agreed on it because it was a close approximation of  
14 what the average amount had been for what -- the expense  
15 reimbursement. So the original Activist economic construct for  
16 Activist billing PRES was Activist's actual expenses plus  
17 7-1/2 percent.

18 And what would happen is, if they signed a new data  
19 source, or if they had to make upfront payments, or other  
20 things were necessary, frequently it would -- we wouldn't get  
21 all the bills immediately, the bills would need to get paid,  
22 and there were cash flow issues that would arise. So we  
23 thought a better number would be, instead of costs plus  
24 7-1/2 percent, look at what the average numbers had been for  
25 the invoices, create a little bit of a buffer, and then charge

N4JKUSB3

Garg - Cross

1 that amount, and that's how we came to \$235,000.

2 Q. And that amount stayed consistent over time, correct?

3 A. That did.

4 Q. Did you ever reevaluate that number?

5 A. We evaluated that number as some of the work started coming  
6 down and some of the data contracts started becoming less  
7 expensive. And, so, we did reevaluate that number, and that  
8 number was -- when we moved the contract from Activist to PAM,  
9 that number went down from \$235,000 to \$185,000.

10 Q. You testified that PRES also engaged two individuals,  
11 Dr. Mingsung Tang and Ziggy Jonsson, correct?

12 A. That's correct.

13 Q. They were actually employed by EIFC on behalf of Activist,  
14 correct?

15 A. That's correct.

16 Q. And in their roles, they created algorithms to match loan  
17 level data from the trust with the data from the databases,  
18 correct?

19 A. That's correct.

20 Q. And your previous testimony was that even though they were  
21 employed by EIFC, Dr. Tang and Mr. Jonsson received their  
22 bonuses directly from PRES?

23 A. That's correct.

24 Q. And the reason that they weren't paid their bonus through  
25 their engagement with Activist was because Activist didn't

N4JKUSB3

Garg - Cross

1 receive any incentive fees or wasn't privy to incentive fees  
2 from PRES, correct?

3 A. It was not in that -- yeah, it was not in their economic  
4 construct.

5 Q. So Activist would not have the money to pay a bonus to  
6 Dr. Tang --

7 A. No.

8 Q. -- or Mr. Jonsson, only PRES would have that money,  
9 correct?

10 A. That's correct.

11 Q. And you yourself received bonuses from PRES, correct?

12 A. I recall receiving a bonus from Phoenix Cayman. I don't  
13 recall receiving a bonus from PRES.

14 Q. But you may have received profit participation from PRES;  
15 is that correct?

16 A. I don't recall receiving any profit participation from  
17 PRES.

18 Q. But you certainly received director fees; is that right?

19 A. I did receive director fees from PRES, yes.

20 Q. Let's turn to tab 16, which is Exhibit 1205.

21 MS. BUCKEL: And this has yet to be admitted, your  
22 Honor.

23 THE COURT: 15, did you say?

24 MS. BUCKEL: 16.

25 THE COURT: Thank you.

N4JKUSB3

Garg - Cross

1 BY MS. BUCKEL:

2 Q. Mr. Garg, do you recognize this document?

3 THE COURT: This is Exhibit 1205, correct?

4 MS. BUCKEL: 1205, correct.

5 THE WITNESS: I don't recognize the document, ma'am.

6 Q. Is the document titled Vishal Garg paid and accrued  
7 director fees from 2015 to 2019?

8 A. Yes.

9 Q. It lists, from April '15 to April 2018, that you received  
10 just over \$800,000 in director fees; is that right?

11 MS. BEAUMONT: Objection. The document is not in  
12 evidence.

13 THE COURT: The document has not yet been admitted  
14 into evidence yet, Ms. Buckel.

15 BY MS. BUCKEL:

16 Q. Mr. Garg, is there any reason to believe that the numbers  
17 on this document are incorrect?

18 A. I know I was getting \$20,000 a month. So, maybe the 40,000  
19 is two months paid at the same time or something like that, but  
20 it seems generally to be in the ballpark.

21 MS. BUCKEL: Your Honor, I'd like to offer  
22 Exhibit 1205 into evidence.

23 MS. BEAUMONT: I don't believe the proper foundation  
24 has been laid.

25 THE COURT: I'll take it subject to the concerns that

N4JKUSB3

Garg - Cross

1 you've raised.

2 So, 1205 is admitted.

3 (Trial Exhibit 1205 received in evidence)

4 BY MS. BUCKEL:

5 Q. Mr. Garg, the paid director fees from April 7, 2015, to  
6 April 14, 2018, list that you've received just over \$800,000 in  
7 director fees; is that correct?

8 A. Yes.

9 Q. And from May 31, 2018, through December 31, 2019, you  
10 accrued director fees at \$28,000 per month, correct?

11 A. Yes.

12 Q. For a total of \$400,000?

13 A. Right.

14 Those haven't been paid.

15 Q. Correct.

16 Have you continued to accrue director fees at \$20,000  
17 per month after December 2019?

18 A. Ma'am, I couldn't tell you.

19 Q. Could you tell the Court what work you did in return for  
20 these director fees?

21 A. I was directing the entire strategy of the company,  
22 organizing the different vendors, organizing the work product,  
23 and, in general, coordinating with investors, coordinating with  
24 the Triaxx CDOs themselves and the collateral manager, and,  
25 most importantly, with the law firms that were hired by the

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Garg - Cross

1 CDOs to pursue Activist -- to pursue remedies for the  
2 improperly originated loans.

3 Q. Switching gears a little bit back to the subcontracting  
4 agreements.

5 You testified that, at some point, the subcontract  
6 agreement with Activist was terminated and you entered into a  
7 new subcontract agreement with Phoenix Advisors and Managers;  
8 is that correct?

9 A. That's correct.

10 Q. Can I call it PAM?

11 A. Yes.

12 Q. And PAM, like Activist, didn't have any employees; is that  
13 right?

14 A. Yes.

15 Q. And, at that point, Mr. Jonsson and Dr. Tang stopped being  
16 employees of EIFC and became partners at 1/0 Capital, correct?

17 A. That's correct.

18 Q. And they performed the same work for Phoenix or for PAM as  
19 they did for Activist, correct?

20 A. Yes. They were -- and they were also employees of Phoenix  
21 Advisors and Managers USA, the subcontractor, for PAM.

22 Q. Understood.

23 Did they use the same algorithms that they had  
24 developed at Activist?

25 A. No. They were superior.

N4JKUSB3

Garg - Cross

1 Q. They were superior?

2 A. Yes.

3 Q. Was that just the general -- let me start over.

4 Did they start with the algorithms that they had come  
5 together -- that they had put together at Activist and made  
6 them superior at PAM?

7 A. No.

8 Q. They were brand new algorithms created from scratch?

9 A. On new datasets, yes.

10 Q. Understood.

11 When did Mr. Jonsson and Dr. Tang create these new  
12 algorithms from the new datasets?

13 A. I helped in making them happen. So, I had started scouting  
14 different more sources of data and data vendors to more further  
15 refine -- particularly related to servicing challenges -- to  
16 find issues and inside the mortgage-backed securities trust, so  
17 we moved to two new data vendors. Activist had primarily used  
18 CoreLogic as its dominant data vendor, and then used that to --  
19 in conjunction with the assessor records and the recorder  
20 records at the county courthouses to figure out what addresses  
21 were inside the underlying loans.

22 We did a totally different analysis. We utilized a  
23 different company called MBSData, and then we started --

24 THE COURT: Slow down, slow down, Mr. Garg.

25 THE WITNESS: So sorry.

N4JKUSB3

Garg - Cross

1 THE COURT: What data?

2 THE WITNESS: MBSData.

3 THE COURT: Thank you.

4 THE WITNESS: And then we started going to the  
5 individual courthouses themselves and downloading all of the  
6 property transaction data records.

7 We went to MIRS, which is the mortgage electronic  
8 recording system, started getting the data from there, and we  
9 started using the internet, and specifically sites like Zillow  
10 and the like and property transaction data from there, to  
11 create a far superior model of identifying the, effectively,  
12 history of what happened to a house and the many mortgages that  
13 got recorded against that house.

14 BY MS. BUCKEL:

15 Q. That's wonderful, Mr. Garg, but I asked you when you did  
16 this.

17 A. In 2013 and 2014.

18 Q. So it took you approximately two years?

19 A. It took a while.

20 Q. Mr. Jonsson and Dr. Tang were joined by Mr. Savino at PAM;  
21 is that correct?

22 A. That's correct.

23 Q. After PAM took over the subcontract, were Dr. Tang,  
24 Mr. Jonsson, and now Mr. Savino still eligible for bonuses from  
25 PRES?



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Garg - Cross

1 A. Yes.

2 Q. And you and Raja would still determine those bonuses,  
3 correct?

4 A. That's correct.

5 Q. And those bonuses would still come from PRES, correct?

6 A. I think some of them came from PRES and some of them came  
7 from PAM USA directly.

8 Q. So I would like you to turn to tab 5 in your binder,  
9 Exhibit 2034.

10 MS. BUCKEL: For the Court, this exhibit is already in  
11 evidence.

12 THE COURT: Thank you.

13 MS. BUCKEL: I know this is a large exhibit, so,  
14 again, we have tabbed it to divide up the parent email and the  
15 attachments thereto.

16 BY MS. BUCKEL:

17 Q. Mr. Garg, do you see the email that is in tab A, that ends  
18 in the Bates stamp 2327?

19 A. Yes.

20 MS. BUCKEL: I'm sorry, I misstated the exhibit  
21 number. The exhibit is 1037, and it's the same as Mr. Savla's  
22 Exhibit 2034. Apologies.

23 THE COURT: You want me to admit it under this number?

24 MS. BUCKEL: 1037, yes, please.

25 THE COURT: Any objection?

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Garg - Cross

1 MS. BUCKEL: I believe it is already in evidence.

2 THE COURT: Well, then, in that case, I don't need to  
3 admit it. Thank you.

4 BY MS. BUCKEL:

5 Q. So, Mr. Garg, do you recognize this email?

6 THE COURT: Are we talking about the cover email?

7 MS. BUCKEL: Yes, under tab A.

8 THE WITNESS: I don't have any recollection of it, but  
9 it appears to be something addressed to me.

10 BY MS. BUCKEL:

11 Q. And the subject of the email is ARAM/ICP closing documents;  
12 is that correct?

13 A. Yes.

14 Q. It lists a bunch of different attachments with just  
15 numbers, correct?

16 A. Yes.

17 Q. Let's turn to, I believe it is, tab E, which ends in the  
18 Bates stamp 387.

19 MS. BUCKEL: Can you go one next to that, Tom?

20 Q. Are you at that page, Mr. Garg?

21 A. Page 8?

22 Q. Under tab E --

23 A. Yes.

24 Q. -- secondary sale and repurchase agreement?

25 You previously testified that this is an agreement

N4JKUSB3

Garg - Cross

1 between ARAM Phoenix Investments and ICP to buy ICP's economic  
2 interests in its fee entitlements in the 07-1 transaction,  
3 correct?

4 THE COURT: Ms. Buckel, I just want to make sure that  
5 what's on the screen is the same document that we're looking  
6 at.

7 MS. BUCKEL: It is not.

8 THE COURT: And it's not.

9 MS. BUCKEL: We can look at that one first. I was  
10 kind of going in reverse order.

11 Let's look at tab F first.

12 THE COURT: Just as we --

13 MS. BUCKEL: Okay, tab E. I was going to go out of  
14 order, but let me do that.

15 THE COURT: All right. We're at tab E, which is the  
16 secondary sale and repurchase agreement final, correct?

17 MS. BUCKEL: Correct.

18 THE COURT: Okay. Thank you.

19 BY MS. BUCKEL:

20 Q. So this is the agreement with Triaxx 2007, correct?  
21 2007-1?

22 A. Yes.

23 Q. And the total amount paid for these fee entitlements was  
24 \$2.25 million, correct?

25 A. Yes.

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Garg - Cross

1 Q. And this was for the entirety of 07-1's subordinate  
2 management fee and incentive fees?

3 A. Yes.

4 Q. If we turn now to tab F, you testified previously that this  
5 is a similar, but not identical document for -- or an agreement  
6 between ARAM and Phoenix Investments Ltd. and ICP to buy ICP's  
7 economic interests in its fee entitlement for Triaxx 2006-1 and  
8 Triaxx 2006-2; is that correct?

9 A. Yes.

10 Q. And, again, the fee entitlements here are the subordinate  
11 management fee and the incentive management fee, correct?

12 A. Yes.

13 Q. And here, you also testified that pursuant to this  
14 agreement, Phoenix Investments paid ICP \$2.25 million?

15 A. Yes.

16 Q. And, to be clear, this included 100 percent of the  
17 subordinate management fee in 2006-1 and 2006-2?

18 A. I believe so.

19 Q. And this also included 100 percent of the incentive fee in  
20 2006-1?

21 A. I believe so.

22 Q. And this included 25 percent of the incentive management  
23 fee in 2006-2, correct?

24 A. Yes.

25 Q. And this was because another entity, Alliance, was entitled

N4JKUSB3

Garg - Cross

1 to 75 percent of the incentive management fee in 06-2 pursuant  
2 to a prior agreement; is that right?

3 A. They're not entitled to 75 percent; they're entitled to  
4 75 percent to the point that they get paid off on a loan that  
5 ICP had taken out for them.

6 Q. So, unfortunately, I haven't seen that agreement, but I  
7 understand, from this agreement, that they were entitled to  
8 75 percent until the release date of that prior agreement; is  
9 that right?

10 A. That's correct.

11 Q. And that release date is when they got paid off?

12 A. Yes.

13 Q. Do you know when this release date was?

14 A. They've never been paid off.

15 Q. They have never been paid off, so Alliance is still  
16 entitled to that money?

17 A. Yes.

18 THE COURT: Just so I'm following along at home here,  
19 Ms. Buckel, you're saying that it was 25 percent of the  
20 incentive management fee in 2006-2, but not in the other deals?

21 MS. BUCKEL: Correct.

22 THE COURT: Thank you.

23 BY MS. BUCKEL:

24 Q. Now, Mr. Garg, so these secondary sale and repurchase  
25 agreements were with an entity called ARAM Phoenix Investments

N4JKUSB3

Garg - Cross

1 Ltd.; is that right?

2 A. Yes.

3 Q. And if you turn back -- let's first ask this question:

4 What is ARAM Phoenix Investments Ltd. called or  
5 referred to now, today?

6 A. I think it's called Phoenix Structured Credit Investments.

7 Q. Understood.

8 If you turn back to tab 2, and the chart found in  
9 Exhibit 1185, would you point me to where Phoenix Structured  
10 Credit Investments Ltd. is on this chart?

11 A. Oh, it's not on this chart because this is only the 1/0  
12 entity. If you go to the next page, it would be under Phoenix  
13 Holdco L.P. It's not in this diagram. Just as where Phoenix  
14 Real Estate Solutions Ltd. is, there should be another box that  
15 has Phoenix Structured Credit Investments Ltd.

16 Q. So just to be clear for the record, you have Phoenix Holdco  
17 as the parent company to be a hundred percent owner of Phoenix  
18 Real Estate Solutions Ltd., or PRES, and then also a hundred  
19 percent owner of Phoenix Structured Credit Investments Ltd.?

20 A. That's correct.

21 Q. And we can call that -- or I believe it's abbreviated as  
22 PSCIL?

23 A. Yes.

24 Q. Mr. Garg, did PSCIL pay the sum of money -- the sum total  
25 of \$4.5 million under these two agreements with funds from

N4JKUSB3

Garg - Cross

1 Phoenix Holdco?

2 A. It did.

3 Q. So of that \$5 million -- of that \$5 million that was raised  
4 in Phoenix Holdco, \$4.5 million was used for these two  
5 agreements?

6 A. Yes.

7 Q. And after the execution of these agreements, isn't it true  
8 that the collateral manager no longer had any entitlement to  
9 fees?

10 A. I believe that that's correct.

11 Q. Let's go back to Exhibit 1037, and turn to tab H, which is  
12 the option to purchase agreement. This is the Bates ending in  
13 2418.

14 THE COURT: This is tab 3H, like Harry?

15 MS. BUCKEL: 5H.

16 THE COURT: 5H, like Harry.

17 BY MS. BUCKEL:

18 Q. And, Mr. Garg, you previously testified that this document  
19 evidences Phoenix Investments' option to purchase ICPM's  
20 rights; is that correct?

21 A. To purchase the ICPAM rights.

22 Q. And the purchaser here, again, was ARAM Phoenix Investments  
23 Ltd., which is now known as PSCIL?

24 A. Yes.

25 Q. You entered into this agreement so Phoenix Investments

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Garg - Cross

1 would have an ability to intervene if ICP put itself up for  
2 sale; is that correct?

3 A. Not just for sale, but was to enter any kind of -- was to  
4 take any action that was detrimental to the value of the  
5 residuals.

6 Q. So, in other words, this was to protect your \$4.5 million  
7 investment on the fees purchased through the secondary sale and  
8 repurchase agreements?

9 A. Yes.

10 Q. And there was no additional consideration paid for this  
11 agreement?

12 A. Just the one dollar. It's an option, yeah, so...

13 Q. Understood.

14 Is it fair to say that PRES was set up solely to  
15 provide the analytical services to ICP while Phoenix  
16 Investments or ARAM Phoenix Investments Ltd. was an entity set  
17 up to purchase ICP's assets?

18 MS. BEAUMONT: Objection.

19 THE COURT: Let me hear the question back, please.

20 Hold on, Mr. Garg.

21 (Record read)

22 THE COURT: Which of those two entities did you mean  
23 in the while clause of your sentence, Ms. Buckel?

24 MS. BUCKEL: Apologies. I meant --

25 THE COURT: Why don't you state the question again,



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Garg - Cross

1 and then I'll see if there's an objection.

2 BY MS. BUCKEL:

3 Q. Is it fair to say that PRES was set up solely to provide  
4 the analytical services to ICP, while ARAM Phoenix Investments  
5 Ltd. was an entity set up to purchase ICP's assets?

6 MS. BEAUMONT: Objection.

7 THE COURT: Hold off, Mr. Garg.

8 Basis?

9 MS. BEAUMONT: I don't believe that PRES was retained  
10 to provide analytical services to ICP.

11 THE COURT: That's not an objection.

12 MS. BEAUMONT: It's a misstatement --

13 THE COURT: I'll allow the question.

14 THE WITNESS: No, that's not correct.

15 BY MS. BUCKEL:

16 Q. Let me take it in turn.

17 Was PRES set up to provide the analytical services to  
18 ICP?

19 A. No.

20 Q. What was PRES set up to do?

21 A. PRES was set up to provide analytical services to Triaxx  
22 CDOs.

23 Q. Is it fair to say that PRES was set up to provide the  
24 analytical services to the Triaxx CDOs, while ARAM Phoenix  
25 Investments Ltd. was an entity set up to purchase ICP's assets?

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Garg - Cross

1 A. No.

2 Q. So is it fair to say that ARAM Phoenix Investments Ltd. was  
3 an entity set up to purchase ICP's assets?

4 A. No.

5 Q. What was ARAM Phoenix Investments Ltd. set up as an entity  
6 to do?

7 A. It was set up to buy CDO residuals from a range of CDO  
8 managers that we would encounter, of which ICP was just the  
9 first one.

10 Q. So ARAM Phoenix Investments Ltd. purchased CDO residuals  
11 from other CDOs as well?

12 A. It attempted to, but it didn't consummate those  
13 transactions.

14 Q. Understood.

15 So is it fair to say, then, that PRES was set up  
16 solely to provide the analytical services to the Triaxx CDOs,  
17 while ARAM Phoenix Investments Ltd. was an entity that  
18 purchased ICP's assets?

19 THE COURT: Maybe you meant to say residuals; maybe  
20 you didn't.

21 THE WITNESS: It was not set up to buy ICP's assets.

22 MS. BUCKEL: I'll do that. That was my second  
23 question.

24 BY MS. BUCKEL:

25 Q. Is it fair to say that PRES was set up to provide the

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Garg - Cross

1 analytical services to the Triaxx CDOs, while ARAM Phoenix  
2 Investments Ltd. was an entity that purchased the CDOs'  
3 residuals?

4 A. Yes.

5 Q. All right. Let's move to the next agreement.

6 Let's go to the consulting agreement with PSD  
7 Partners, which I believe is in tab G, and it ends with the  
8 Bates 2406.

9 THE COURT: This is the PSD Partners contract?

10 MS. BUCKEL: That is correct.

11 Q. Now, Mr. Garg, excuse me if I am repeating the testimony  
12 previously elicited, but I want to go back to those first three  
13 lines.

14 So this agreement was dated as of March 22nd, 2011;  
15 that's correct?

16 A. That's correct.

17 Q. And PSD Partners LLC was defined as the provider?

18 A. That's correct.

19 Q. And ARAM Phoenix Holdco L.P. was defined as Holdco?

20 A. That's correct.

21 Q. And ARAM Phoenix Investments Ltd. was defined as Investco?

22 A. That's correct.

23 Q. And ARAM Phoenix Real Estate Solutions Ltd. was defined as  
24 Opco?

25 A. That's correct.

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Garg - Cross

1 Q. And down further on the page -- or, sorry, on page 2, it  
2 states -- paragraph 4, it states that: "For its services  
3 hereunder, provider shall be entitled to receive 25 percent of  
4 the net cash flow generated by the targeted securities acquired  
5 by Investco and from third-party advisory contracts entered  
6 into by Opco"; is that correct?

7 A. That's correct.

8 Q. And, again, Opco is defined as ARAM Phoenix Real Estate  
9 Solutions Ltd., or what we now refer to as PRES; is that  
10 correct?

11 A. That's correct.

12 Q. So does this provision in this agreement, which is  
13 highlighted here, entitle PSD Partners to 25 percent of the  
14 revenue from PRES's contract with the Triaxx CDOs, otherwise  
15 known as the engagement agreements?

16 A. No.

17 Q. Why is that?

18 A. Because it only entitles it to 25 percent of the net cash  
19 flow generated by any securities that Investco buys that are  
20 targeted securities, so the other junior notes and other  
21 mortgage-backed securities. So, going back to what I was  
22 saying earlier, the Investco vehicle was really meant to buy  
23 residuals of the Triaxx CDOs, other CDOs, and then other RMBS  
24 deals. So, if we were -- if we used the consultant services to  
25 go and do those, then once we got -- once Phoenix Structured

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Garg - Cross

1 Credit Investments got its money back, and then whatever would  
2 be profit, minus any expenses, then PSD advisors would get  
3 25 percent of that.

4 Q. To be fair, I'm a little confused because there's this word  
5 "and" in the sentence.

6 I believe you were just discussing 25 percent of the  
7 net cash flow generated by the targeted securities acquired by  
8 Investco; is that correct?

9 A. Yes.

10 Q. And then there's the word "and" from third-party advisory  
11 contracts entered into by Opco.

12 A. Yes. So, for the third-party advisory contracts. So let's  
13 assume PSD was helpful in generating an advisory contract, then  
14 whatever was the profit generated from that advisory contract –  
15 not the revenue, but the profit – after the investors in  
16 Investco and Opco and Holdco got all their money back, then PSD  
17 would be entitled to 25 percent of that.

18 THE COURT: Can I hear that again, please?

19 And we're talking about the second clause in the  
20 sentence, correct?

21 THE WITNESS: Uh-huh.

22 THE COURT: The 25 percent of the net -- as I read it,  
23 25 percent of the net cash flow from third-party advisory  
24 contracts entered into by Opco, i.e., PRES; that's what you're  
25 defining for us?

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Garg - Cross

1 THE WITNESS: Yeah. And then if you keep reading on  
2 the rest of the page, it then has the construct of only after  
3 the investors get all their money back.

4 THE COURT: At the top of the next page?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Thank you.

7 BY MS. BUCKEL:

8 Q. Help me understand this a little bit more. You said after  
9 the investors get all their money back. That was investors in  
10 Holdco; is that correct?

11 A. Yes.

12 Q. When did that occur?

13 A. When did the investors in Holdco get all their money back?

14 Q. Yes.

15 A. I think we were able to distribute enough to the holders in  
16 Holdco by the end of 2014. I think it was like December 2014  
17 or January 2015 that they had received their initial investment  
18 back.

19 Q. Okay. So, help me understand, going back to what you just  
20 said. After that occurred, so after the end of 2014/early  
21 2015, then provider, which is PSD Partners, would be entitled  
22 to receive 25 percent of the net cash flow from the engagement  
23 agreements between --

24 A. Yeah, from either the engagement agreements or from any  
25 profits from the residuals that were invested in.

N4JKUSB3

Garg - Cross

1 Q. So the profits from the residuals, would that be in the  
2 secondary sale and repurchase agreements?

3 A. Yes.

4 Q. So would PSD Partners send Phoenix, PRES, or Phoenix  
5 Investments any invoices for payment?

6 A. No.

7 Q. Did they send any written requests?

8 A. Not that I remember. It was on the Phoenix entities' -- it  
9 was the obligation of the Phoenix entities to tell PSD that  
10 they had generated a profit, and then that this was PSD's share  
11 of the profit.

12 Q. And the Phoenix entities would evidence that in some  
13 written writing?

14 A. Generally, yes.

15 Q. So, Mr. Garg, we've spoken a bunch about the fees owed to  
16 Phoenix under the engagement agreements, and I want to talk  
17 specifically more about that incentive fee owed to Phoenix.

18 Previously, you've agreed that the engagement  
19 agreements stated that the fees were to be paid as  
20 administrative expenses pursuant to the Triaxx CDOs' priority  
21 of payments waterfall, as outlined in the indentures; is that  
22 correct?

23 A. Yeah, the administrative expenses allocation is what would  
24 pay for the regular fees.

25 Q. But isn't it true that the incentive fees were sometimes

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Garg - Cross

1 paid out of these monthly distributions, but other times they  
2 were paid out of recoveries from the Activist litigation  
3 strategy?

4 THE COURT: When you say "monthly distributions," you  
5 mean monthly administrative expense distributions through the  
6 trustee?

7 MS. BUCKEL: Yes, your Honor.

8 THE COURT: Thank you.

9 THE WITNESS: Yes. And sometimes the monthly fees  
10 would be actually paid out of the recoveries that were in the  
11 trust account. So, if you remember, there was something where  
12 there was the accounting from Miller Wrubel earlier in the day.  
13 That had both fees that were, like, monthly fees that were paid  
14 out of that account, as well as incentive fees.

15 BY MS. BUCKEL:

16 Q. So if the incentive fee was a small number and could be  
17 added to an invoice, it was paid out of the waterfall, correct?

18 A. Yes.

19 Q. But if it was a larger invoice, it was paid out of the  
20 recoveries?

21 A. And vice versa.

22 Q. So, was there any rule as to when the fees for Phoenix were  
23 paid inside the waterfall versus outside the waterfall?

24 A. No, because what would happen is, Phoenix was frequently  
25 paid less than what it was owed by the Triaxx CDOs because the



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Garg - Cross

1 administrative expense cap would be hit. And, so, Phoenix did  
2 the work, but if there were other expenses, like lawyers' fees,  
3 trustee fees, other fees like that, that would be part of the  
4 administrative expenses. Then sometimes those took priority,  
5 and so Phoenix didn't get paid its full invoice amount, and  
6 then that invoice amount would roll over and roll over. And  
7 then let's say there was a recovery, then if there was a  
8 recovery, and there was surplus funds, then the outstanding  
9 amounts could be cleared.

10 Q. Who made the decisions as to when the amounts were paid  
11 inside the waterfall versus outside of the waterfall?

12 A. The collateral manager, Tom Priore.

13 Q. And after PAM purchased the collateral manager, who would  
14 make those decisions?

15 A. Nick Calamari.

16 Q. How would the attorneys who distributed the funds from the  
17 escrow accounts know how much to pay to Phoenix?

18 A. They would have the invoices that were approved because we  
19 would send the invoices to U.S. Bank, and then U.S. Bank would  
20 register those invoices as due and payable, and then they would  
21 know that these are the amounts that are payable, so the  
22 attorneys would know that these are the amounts that are  
23 outstanding to pay to Phoenix, that these are the amounts  
24 outstanding to pay some of the other law firms, so on and so  
25 forth. I think there was -- I don't remember who it was, but

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Garg - Cross

1 it was either, like, Ken Sliwa, as the trustee, or Ranchan  
2 Arahm, at the collateral manager, that would manage those  
3 things, that had the accounting for those things.

4 Q. To be clear, this is fees paid inside the waterfall,  
5 correct?

6 A. I'm sorry, I'm not able -- what do you mean by that?

7 Q. So, my original question was how did -- for the funds that  
8 were in the attorneys' escrow account --

9 A. Yeah.

10 Q. -- how did the attorney who managed that escrow account  
11 know who and how much to pay?

12 A. I don't know what -- I wasn't involved in that level of  
13 detail, I'm sorry.

14 THE COURT: So the answer that you just gave us,  
15 Mr. Garg, had to do with invoices that were sent to the trustee  
16 for processing as administrative expenses through the  
17 waterfall?

18 THE WITNESS: Yes.

19 THE COURT: Thank you.

20 THE WITNESS: And the trustee also got all the  
21 invoices for the incentive fees, too. So the trustee got all  
22 the invoices. So, like when Countrywide -- the Countrywide  
23 recovery took place, the trustee got all of the invoices for  
24 that as well.

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Garg - Cross

1 BY MS. BUCKEL:

2 Q. So it's your testimony that the trustee was sent all of the  
3 invoices for the incentive fees even though they were not paid  
4 out of the waterfall?

5 A. Yes.

6 Q. Do you have any evidence to back up that assertion?

7 A. I remember that John Moon at Miller Wrubel put together a  
8 whole packet of, this has been the recovery that's taken place,  
9 this has been -- these are, you know, who's -- these are who  
10 needs to get paid. And that, I think, was sent to the trustee,  
11 the issuer, and then we also even sent a note to the  
12 bondholders. I think Triaxx/ICP Asset Management at that time  
13 sent a note to the bondholders saying that they had had a  
14 recovery.

15 So, I specifically remember like a packet that was put  
16 together.

17 Q. And you remember that packet being sent to the trustee?

18 A. I remember that packet was addressed to the trustee, the  
19 issuer, yeah.

20 Q. So the letters from Mr. Moon were addressed to the trustee?

21 A. Yeah. Or the trustee or the issuer, I don't remember which  
22 of the two, but they were all on it.

23 Q. All of the entities involved?

24 A. Yeah.

25 Q. So --

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Garg - Cross

1 A. Everyone who was sort of a governing entity that governed  
2 the trust, whether it was the collateral manager, the  
3 collateral manager and John Moon on behalf of the CDOs, sent  
4 this packet to the trustee and the issuer.

5 Q. But, to be fair, you did not send that packet to the  
6 trustee?

7 A. Oh, it wasn't my place, no.

8 Q. Did the collateral manager send that packet to the trustee?

9 A. Probably, yeah. The collateral manager or John Moon at  
10 Miller Wrubel, one of the two of them.

11 Q. So for every single fee that was paid outside the  
12 waterfall, the trustee got notice from Mr. Moon or the  
13 collateral manager?

14 A. It's my understanding that, yes, they were all coordinated.

15 Look, I was just doing the work, so my job is, I do  
16 the work, there's a person on my team who submits an invoice,  
17 we would submit the invoice to whoever the collateral manager  
18 told us to submit it to. Most of the time -- I would say  
19 almost all the invoices were sent to Tom Priore, Raj ram at the  
20 collateral manager, and Ken Sliwa and the people that work for  
21 Ken Sliwa at the trustee.

22 I mean, I remember times that the invoices were sent  
23 by my team late, and Ken Sliwa would call us and say, hey,  
24 don't you guys have invoices for this month.

25 So, I think everyone was in the loop.

N4JKUSB3

Garg - Cross

1 Q. And by your team, who do you mean?

2 A. Ziggy, Mingsung.

3 Q. So they sent all the incentive fee invoices to the trustee  
4 every single time?

5 A. No, no. My team wouldn't send -- my team may or may not  
6 have sent the incentive fee invoices, but I know that John Moon  
7 certainly did.

8 Q. How do you know that?

9 A. Because I remember the packet that was compiled, and it was  
10 sent to everyone, because I had to, like -- we had to write it  
11 up.

12 Q. Who was "we"?

13 A. The Phoenix team had to write up what was the methodology  
14 for the calculation for the incentive fee.

15 Q. Understood.

16 So, the Phoenix team decided the incentive fee, and  
17 they sent that to who?

18 A. It was sent for approval.

19 Q. Sent it to who?

20 A. To ICP and to the trust -- to John Moon, who then sent it  
21 to the trustee and the issuer.

22 Q. And you are sure that Mr. John Moon sent that to the  
23 trustee and the issuer?

24 A. I am pretty sure. I mean, I'm not -- I'm not 100 percent  
25 certain, no, ma'am.

N4JKUSB3

Garg - Cross

1 Q. Understood.

2 I had a couple of questions about Phoenix Holdco, but  
3 I think they've already been covered, but I do want to have you  
4 turn to tab 14 in your binder.

5 A. Yep.

6 Q. And this is Exhibit 1036. It has not yet been admitted  
7 into evidence. And it is titled, "The Amended and Restated  
8 Exempted Limited Partnership Agreement of ARAM Phoenix Holdco."

9 Do you see that, Mr. Garg?

10 A. Uh-huh.

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. And this is the amended and restated exempted limited  
14 partnership of ARAM Phoenix Holdco?

15 A. Yes.

16 MS. BUCKEL: Your Honor, I'd like to move Exhibit 1036  
17 into evidence.

18 MS. BEAUMONT: No objection.

19 THE COURT: Exhibit 1036 is admitted.

20 (Trial Exhibit 1036 received in evidence)

21 BY MS. BUCKEL:

22 Q. And related to this agreement, just as a general question,  
23 you had previously testified that Phoenix Holdco would make --  
24 from time to time, Phoenix Holdco would make a distribution to  
25 its limited partners; is that correct?

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Garg - Cross

1 A. Yes.

2 Q. You previously testified that the limited partners were  
3 paid off in 2014/2015, that time period?

4 A. Yeah, December 2014/January 2015.

5 Q. How would it be determined what went to the limited  
6 partners and what went to the general partner?

7 A. Oh, there was a strict formula that nothing went to the  
8 general partner until the limited partners received all their  
9 money back plus their preferred return of 8 percent. And then,  
10 after that, each marginal dollar would be sent 25 percent of  
11 the limited partners -- each marginal dollar of profit would be  
12 sent 25 percent to the limited partners and 75 percent to the  
13 general partner.

14 Q. And this is --

15 THE COURT: Ms. Buckel, point of clarification, again,  
16 to make sure I'm following along here at home: The entity  
17 called ARAM Phoenix Holdco in Exhibit 1036, this is the entity  
18 now called Phoenix Holdco L.P.?

19 MS. BUCKEL: I believe so.

20 But can the witness confirm?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MS. BUCKEL:

24 Q. What you were just talking about, Mr. Garg, that's all laid  
25 out in this agreement, correct?

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Garg - Cross

1 A. Yes.

2 Q. Now, isn't it true that certain limited partners of Phoenix  
3 Holdco L.P. are suing yourself and others, including Phoenix  
4 Cayman Ltd., Nicholas Calamari, Triaxx Holdco LLC, and 1/0  
5 Capital LLC in New York State court?

6 THE COURT: Hold off, Mr. Garg.

7 MS. BEAUMONT: Objection; relevance.

8 THE COURT: Well, I need to hear it before I can  
9 determine whether it's relevant. Then you may move to strike  
10 if you still have the objection.

11 You may answer the question, Mr. Garg.

12 THE WITNESS: They are.

13 BY MS. BUCKEL:

14 Q. And part of this lawsuit is that you are not following the  
15 provisions laid out in this agreement?

16 MS. BEAUMONT: Objection; relevance.

17 THE COURT: I'm going to hear the whole thing, and you  
18 can have a continuing objection.

19 Ms. Buckel.

20 THE WITNESS: They have many grievances. I'm not sure  
21 if that is one of them or not.

22 BY MS. BUCKEL:

23 Q. Is it true that they are alleging -- I'm not -- they are  
24 alleging in this lawsuit that you misappropriated the funds of  
25 the ARAM Phoenix Holdco L.P. partnership?



N4JKUSB3

Garg - Cross

1 A. I believe that is one of their allegations, yes.

2 Q. And just to confirm, this exempted limited partnership  
3 agreement is dated March 22nd, 2011?

4 A. That's correct.

5 Q. And the name of the litigation, just for the record, is  
6 entitled Black v. Phoenix, et al.?

7 A. I believe so.

8 THE COURT: Ms. Buckel, are you going to link this up  
9 to anything later on, or was that it?

10 MS. BUCKEL: I will, your Honor.

11 THE COURT: You will?

12 MS. BUCKEL: Yes.

13 THE COURT: All right.

14 Then Ms. Beaumont will hold her fire as well.

15 MS. BUCKEL: I expected as much.

16 BY MS. BUCKEL:

17 Q. Mr. Garg, you had previously testified that when the money  
18 went to the general partners, it would then be sent up the  
19 corporate chain to Asian Castle or given out as bonuses to  
20 Phoenix Cayman?

21 A. I said it could be. There were never any distributions  
22 made to Asian Castle. There were only bonuses paid out of  
23 Phoenix Cayman Ltd.

24 Q. What were the total amount of distributions made?

25 A. To whom?

N4JKUSB3

Garg - Cross

1 Q. You just testified that it went up to Phoenix Cayman,  
2 correct?

3 A. Uh-huh.

4 Q. You previously testified that yourself and Raja Visweswaran  
5 would determine how much would be divided up to Phoenix Cayman,  
6 correct?

7 A. Uh-huh -- no, no, I'm sorry. We would determine what  
8 was -- it was a formula as to what went to Phoenix Cayman Ltd.  
9 versus what was distributed to the limited partners after the  
10 initial amount was paid off -- after the initial investment  
11 plus the preferred return was paid to the L.P.s.

12 So, we didn't have discretion over that. We -- that  
13 was a formulaic.

14 Q. That was formulaic?

15 THE COURT: Are you saying, Mr. Garg, that monies from  
16 the PRES engagement got up the chain as far as the limited and  
17 the general partners of Phoenix Holdco, but were not further  
18 divided up from Phoenix Cayman to Asian Castle?

19 THE WITNESS: That is something -- yeah, that is one  
20 statement I have made. I think what I was telling her was that  
21 the formula for dividing money between the limited partners and  
22 the general partner was formulaic. We didn't have discretion  
23 over it.

24 THE COURT: And I assume that's in the limited  
25 partnership agreement?

N4JKUSB3

Garg - Cross

1 THE WITNESS: That's correct.

2 THE COURT: But you're saying when the money --  
3 whatever portion of the money was due to Phoenix Cayman, it  
4 stayed there?

5 THE WITNESS: Yes.

6 THE COURT: And it didn't go further up the chain?

7 THE WITNESS: Yes. Or it was paid out in bonuses,  
8 yes.

9 THE COURT: Paid out in bonuses to the individuals we  
10 previously discussed?

11 THE WITNESS: Yes, yes.

12 THE COURT: Thank you.

13 BY MS. BUCKEL:

14 Q. So, correct me if I am wrong, but I believe you previously  
15 testified that the amount of these distributions was  
16 \$12 million?

17 THE COURT: Which distributions?

18 THE WITNESS: No, I affirmed an estimate that it was  
19 approximately \$12 million, that I believe whoever was -- I  
20 think it was either you or Mr. Savla said that.

21 THE COURT: Are we talking about bonuses now?

22 MS. BUCKEL: The distributions made to Phoenix Cayman.

23 THE WITNESS: No, the distributions made to Phoenix  
24 Cayman would not be \$12 million. If the amount paid to the  
25 limited partners was \$12 million, the amount -- right, so they

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Garg - Cross

1 invested 5 million, they got their 5 million back, they made a  
2 \$7 million profit, that's the limited partners. The amount  
3 that was given to the general partner, Phoenix Cayman Ltd., I  
4 don't remember the exact number, but I don't think it was  
5 \$12 million. I think it was a much smaller number.

6 MS. BUCKEL: I'm going to introduce tab 6. This is  
7 Exhibit 1198, and it is not yet admitted into evidence.

8 BY MS. BUCKEL:

9 Q. Mr. Garg, do you recognize this document?

10 A. I don't recognize this document, but I think I know where  
11 it's coming from.

12 Q. I'm going to represent to you that this was a document that  
13 was attached to Mr. Alexander Litt's affirmation in opposition  
14 to defendants' motion to dismiss in the Black v. Phoenix  
15 litigation.

16 I'm also going to represent to you that Mr. Litt  
17 stated that this was Exhibit 13, and Exhibit 13 was a  
18 spreadsheet provided by defendants showing the transfer of  
19 partnership funds to defendants and defendants' nonparty  
20 entities.

21 You previously just testified that you were a  
22 defendant in this action; is that correct?

23 A. Yes.

24 THE COURT: Mr. Litt, I take it, is one of the  
25 plaintiff's lawyers in that case?

N4JKUSB3

Garg - Cross

1 MS. BUCKEL: He is. Mr. Litt is an attorney with  
2 Moritt Hock & Hamroff LLP, who was counsel for Plaintiffs  
3 Andrew Black, and Erik Molberg, Celestino Amore, and Dr. Henry  
4 Balboa.

5 BY MS. BUCKEL:

6 Q. Does this refresh your recollection about this document?

7 MS. BEAUMONT: Objection.

8 THE COURT: Hold on.

9 THE WITNESS: I mean, I don't know who Alexander Litt  
10 is, and I don't know what he used to make this document. But I  
11 have not seen this document before.

12 MS. BUCKEL: I would like just to state for the record  
13 that --

14 THE COURT: Are you moving the document into evidence?

15 MS. BUCKEL: I would like to, but I would like to  
16 confirm that it's a spreadsheet provided by defendants, of  
17 which Mr. Garg is one. I would like to move the exhibit into  
18 evidence.

19 THE WITNESS: I have never seen this before.

20 THE COURT: Hold on.

21 THE WITNESS: Sorry, sorry.

22 THE COURT: If you're trying to get this witness to  
23 authenticate the document, you need to get testimony from this  
24 witness that authenticates the document rather than making  
25 representations to me about what it is.

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Garg - Cross

1 MS. BUCKEL: Understood. I was trying to refresh his  
2 recollection to try --

3 THE COURT: All right. Do you want to make another  
4 run at it? Or are you moving it in on your present record?

5 BY MS. BUCKEL:

6 Q. Mr. Garg, did you, as a defendant in the Black v. Phoenix  
7 litigation, compile this document and provide it to your  
8 attorneys?

9 A. I don't remember.

10 Q. Do you have any doubt that your attorneys provided this  
11 document to -- or produced this document in that litigation?

12 A. That litigation is a nuisance litigation funded by a  
13 litigation funder. I cannot attest to any document that the  
14 person representing those defendants created. And I certainly  
15 did not collate this document myself.

16 THE COURT: So we are going to take a break now,  
17 because you've been going an hour after lunch. But before we  
18 take the break, we're going to excuse the witness, and we're  
19 going to have a chat about exhibits.

20 So we're going to excuse you for at least 15 minutes,  
21 Mr. Garg.

22 THE WITNESS: Okay.

23 THE COURT: The same rules apply.

24 Lawyers, stay put for just a minute, please.

25 You are excused temporarily.

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Garg - Cross

1 THE WITNESS: Thank you.

2 (Witness temporarily excused)

3 THE COURT: It's so much easier when you can just  
4 excuse the witness as opposed to having to turn on the white  
5 sound machine and have the lawyers all come up to the bench to  
6 huddle.

7 I don't know that you're going to be able to get this  
8 document in because your witness says he doesn't know what it  
9 is, but my larger question is: What's the point here? I  
10 already understand that the money flowing from the Phoenix  
11 engagement, both through the waterfall and outside of the  
12 waterfall, was going in many different routes and through many  
13 different corporate chains, into the pocket largely, not  
14 entirely, of Mr. Garg.

15 How much more detail do I really need here?

16 MS. BUCKEL: Your Honor, understood. And because I  
17 understood this was put together by Mr. -- or, at least,  
18 Mr. Garg is a codefendant in that litigation --

19 THE COURT: So Mr. Litt was a defense lawyer in that  
20 case, not a plaintiffs' lawyer in that case? Because I thought  
21 you told me that the Litt declaration was a document put in  
22 to --

23 MS. BUCKEL: It was an affirmation in opposition to  
24 defendants' motion to dismiss. So, Mr. Litt is an attorney for  
25 plaintiffs in that case, and this document was produced in that

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Garg - Cross

1 litigation by defendants, of which Mr. Garg is one.

2 THE COURT: So you're representing to me that this is  
3 a document that was produced by defendants, so somebody at one  
4 of Mr. Garg's organizations could authenticate it. But he may  
5 not be the guy who can do that.

6 MS. BUCKEL: Look, I thought he may be able to, and I  
7 was certainly wanting to try. I understand your Honor's point  
8 that you understand a lot of the distributions of money, but  
9 one of the things that I thought was interesting was Mr. Garg's  
10 testimony about the PSD Partners and the 25 percent that would  
11 go to Mr. Priore. I was going to use this document to show the  
12 flow of funds after an incentive payment was made to Phoenix  
13 outside the priority of payments waterfall.

14 THE COURT: I think you're going to have to find  
15 another way to do it.

16 MS. BUCKEL: Okay.

17 THE COURT: So if there's nothing further on this  
18 exhibit or the state court lawsuit, we will take - all of us  
19 now - ten minutes. It's a little earlier than I had originally  
20 planned, but it's never a bad time to take a ten-minute break.

21 So we'll be back at about ten minutes to 3:00, and we  
22 will now be in recess.

23 MS. BEAUMONT: Your Honor, we have Mr. Calamari on  
24 deck.

25 THE COURT: I know that. Thank you for reminding me.



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Garg - Cross

1 I think -- I'm not going to say you promised me,  
2 Ms. Buckel, but you estimated that you had an hour and a half  
3 of cross, and I think you've pretty much used up that hour and  
4 a half. How much more do you have?

5 MS. BUCKEL: A little bit, but I'll try to trim.

6 THE COURT: What's a little bit?

7 MS. BUCKEL: Say 15 to 30 minutes.

8 THE COURT: I'm going to give you 20, and then I'm  
9 going to cut you off, when we come back from break.

10 (Recess)

11 (Continued on next page)

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Garg - Cross

1 (In open court; case called)

2 THE COURT: Sorry to have kept you waiting.

3 Ms. Buckel, 20 minutes.

4 MS. BUCKEL: Thank you, your Honor.

5 BY MS. BUCKEL:

6 Q. Mr. Garg, can you please turn to tab 8 which is Exhibit 13,  
7 and I will represent to the Court this has already been  
8 admitted into evidence.

9 Mr. Garg, is this the clarification letter we were  
10 looking at earlier?

11 A. Yes.

12 Q. Were you involved in the drafting of this letter?

13 A. No.

14 Q. Is it your understanding that Mr. Nicholas Calamari drafted  
15 the letter?

16 A. Yes.

17 Q. But you told him you didn't think it was needed because you  
18 thought the engagement agreements were clear, correct?

19 A. I did.

20 Q. And you felt that the engagement agreements reflected the  
21 business agreement that was reached, correct?

22 A. I'm sorry. Could you restate the question?

23 Q. You felt that the engagement agreements as drafted, as  
24 signed, as executed, reflected the business agreement that was  
25 reached between the deal parties, correct?

N4J3USB4

Garg - Cross

1 A. That was my earlier understanding, and then I realized over  
2 the course of time that it was wording that could have  
3 benefited from clarification.

4 Q. But you told Mr. Calamari that you thought the engagement  
5 agreements were clear. Is that correct?

6 A. I told him that I thought that the business agreement that  
7 there would be \$250,000 of activist implementation fees, and  
8 then depending on what the recovery amount ended up being,  
9 another \$250,000 of incentive was clear.

10 Q. Did you tell -- did you ask Mr. Calamari that why he needed  
11 the letter?

12 A. I don't remember asking him why he needed the letter.  
13 Because he explained it to me that the wording was unclear, and  
14 it was prudent for us to have the letter, considering we had  
15 done the work and we had nothing to hide.

16 Q. But the agreement was clear.

17 A. My read of the agreement was that the agreement was clear.  
18 And but I understand that other people may read it a different  
19 way, and so therefore it was helpful to have the clarification.

20 Q. Understood. But you told Mr. Calamari you didn't think,  
21 you personally did not think it was needed?

22 A. I personally did not think it was needed.

23 Q. Up until the point where the clarification letters were  
24 drafted, had there been any issue with PRES getting paid its  
25 fees it was owed?

N4J3USB4

Garg - Cross

1 A. No, only in that sometimes the administrative cap came into  
2 being, and then PRES was paid at a later time than it would  
3 have traditionally been paid.

4 Q. Was there any concern that PRES would not get paid its fees  
5 in the future?

6 A. No.

7 Q. Mr. Calamari signed the clarification letters; is that  
8 correct?

9 A. He did.

10 Q. He signed them as general counsel of PRES, correct?

11 A. He did.

12 Q. Was Mr. Calamari employed by PRES at the time?

13 A. He was not an employee of PRES at the time.

14 Q. Whom was he employed by?

15 A. He was employed by 1/0 Capital.

16 Q. You testified earlier that Mr. Calamari was general counsel  
17 for a variety of different 1/0 Capital companies, is that  
18 correct?

19 A. That's correct.

20 Q. Mr. Calamari just acted at your direction, correct?

21 A. No, Mr. Calamari had a lot of discretion as to how he  
22 acted.

23 Q. But in terms of which entity he was the general counsel  
24 for, you dictated that; is that correct?

25 A. I didn't dictate anything to Mr. Calamari.

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Garg - Cross

1 Q. How did Mr. Calamari know he was the general counsel of  
2 PRES?

3 A. So 1/0 Capital was set up as an investment company and as  
4 an incubator of various internet businesses. And so in  
5 general, Mr. Calamari was 1/0 Capital's lawyer and would  
6 function in a legal capacity for any number of the businesses  
7 that we would set up.

8 Q. So you didn't need to direct him to be general counsel of  
9 PRES; he was just the general counsel of these companies?

10 A. Yes.

11 Q. Let's talk a little bit more about the purchase of ICP.  
12 You testified earlier that you explored purchasing ICP in 2010,  
13 is that correct?

14 A. Originally in 2010, yes.

15 Q. Let's turn to tab 9, which is Exhibit 1017. I'll represent  
16 to the Court that this exhibit is already in evidence.

17 Mr. Garg, do you recognize this e-mail?

18 A. I do.

19 Q. This is an e-mail from Mr. Balboa that attaches a  
20 memorandum that contains various considerations about a  
21 potential purchase of ICP. Is that correct?

22 A. That's correct.

23 Q. And it seems that Mr. Ziggy Jonsson wrote the memo, the  
24 first stab at the memo before comments were added; is that  
25 correct?

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Garg - Cross

1 A. Yes, yes.

2 Q. You previously testified that Mr. Jonsson looked at various  
3 considerations, whether or not the deal with ICP made sense or  
4 not; is that correct?

5 A. He did.

6 Q. These considerations include the collateral manager's  
7 management fees, and expense reimbursement, is that correct?

8 A. Yes.

9 Q. One of the headings on this memo which is found at Bates  
10 28403 is expense reimbursements with a subheading of annual  
11 income stream or not question mark. Is that right? It's at  
12 the bottom.

13 THE COURT: Which page?

14 MS. BUCKEL: At the bottom of page 1 of the memo which  
15 ends in Bates number 28043.

16 THE COURT: Thank you.

17 A. Yes.

18 Q. Was it your understanding that the collateral manager at  
19 that time was ICP was receiving payment each month for the set  
20 up of services such as Intex and other data services?

21 A. They were getting reimbursed their expenses for that.

22 Q. On the Bates that ends in 28409, which is a couple of pages  
23 in, there are a few comments. And do you believe your comments  
24 are in the red?

25 A. My comments are in the red.

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Garg - Cross

1 Q. And you write: We are only buying if there is truly the  
2 ability to get expense reimbursements equivalent to our  
3 purchase price by the end of year five. Correct?

4 A. I do write that.

5 Q. You view expense reimbursements as an income stream?

6 A. I don't view it as an income stream.

7 Q. But at this point, all the other cash flows to ICP such as  
8 the subordinate management fees and incentive fees were paused,  
9 correct?

10 A. I don't remember if the administrative fees had been paused  
11 yet or not by that time. But, they may have been.

12 Q. If not at that time of 2010, do you believe it was shortly  
13 thereafter?

14 A. Yes.

15 Q. You testified earlier that Phoenix Structured Credit  
16 Investments bought all the credit receivables in the Triaxx  
17 CDOs, correct?

18 A. That's correct.

19 Q. Mr. Garg, doesn't this mean that after the execution of the  
20 secondary sell and repurchase agreements in 2011, that there  
21 were no fees for the collateral manager?

22 A. Yes, but this is a memo from 2010.

23 Q. Apologies. I am asking kind of a future question.

24 THE COURT: Ask the question again.

25 A. In 2010 I wouldn't have known that.

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Garg - Cross

1 Q. After?

2 A. In 2011 --

3 THE COURT: Let her ask the question.

4 Q. So this was the memorandum of your thoughts and  
5 Mr. Jonsson's thoughts in 2010. Correct?

6 A. Yes.

7 Q. You didn't end up by buying ICP at that time?

8 A. Yes.

9 Q. You instead entered into engagement agreements such as the  
10 secondary sell and repurchase agreements?

11 A. Correct.

12 Q. Those secondary sell and repurchase agreements included all  
13 of ICP's fees that they were entitled to under the collateral  
14 manager agreements, correct, of the Triaxx CDOs?

15 A. Yes.

16 Q. So, you did, however, buy ICP in 2015, correct?

17 A. Yes.

18 Q. That was in January?

19 A. Yes.

20 Q. And the final purchase price was somewhere around \$1.3  
21 million?

22 A. Yes.

23 Q. And it was yourself and Mr. Calamari who are owners of  
24 Triaxx Holdco, correct?

25 A. Yes.



N4J3USB4

Garg - Cross

1 Q. From 2010 to 2015, did any entity, including Phoenix  
2 Structured Credit Investments, ICP, or otherwise, receive  
3 subordinate management fees or incentive fees from the Triaxx  
4 CDOs?

5 A. I don't believe so.

6 Q. This was because there was not money in the deal, correct?

7 A. No, there was plenty of money in the deal. The deal was  
8 cash flowing like \$50 million a month. It was because the  
9 ratings test had been triggered, and the ratings test, which  
10 simply was the average of all the ratings of the bonds in the  
11 deal, determined whether the subordinate management fee was to  
12 be paid or not. So the ratings test or the OC trigger or the  
13 ratings trigger were triggered, then there were no subordinate  
14 management fees to be paid.

15 Q. Got it. So there were no subordinate management fees to be  
16 paid from 2010 to 2015, and this was the case even though  
17 Phoenix had provided these activist implementation services  
18 since 2011, correct?

19 A. Yes, because it relied on a test that would take a very  
20 long time -- the rating agencies had downgraded CDOs en masse.  
21 So, when they did that, and specifically they withdrew their  
22 ratings, so the likelihood of the rating agency test to ever  
23 being able to be cured was close to zero. Because the rating  
24 agencies had stopped covering the deals. So, yeah, there  
25 wasn't any chance of that.

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Garg - Cross

1 Q. So there was a very remote chance of getting the fees. Is  
2 that your testimony?

3 A. There was a remote chance of getting them from turning  
4 the -- from fixing the triggers. There was a strong chance of  
5 getting them from you mentioned the deal paying off. Because  
6 as we were doing all the activist work and as we were getting  
7 additional recoveries and as the housing market was turning and  
8 as we were fixing servicing in these deals, all of that meant  
9 that loss severities were coming down. And that the Triaxx  
10 CDOs, their RMBS positions were likely to actually be able to  
11 pay the full amount due. Which is also why none of the  
12 bondholders in the Triaxx CDOs to date from my understanding  
13 have suffered any losses. They've gotten their principal and  
14 interest in full.

15 Q. I believe some people would object to that.

16 But, I guess my question for you is that even if all  
17 this stuff happened, right. Cash flows flowing, these triggers  
18 aren't triggered anymore. We're getting down to these fees.  
19 What is the entity that would receive these fees?

20 A. Phoenix Structured Credit Investments.

21 Q. Not TAM?

22 A. No.

23 Q. So, my question for you is, or despite the remote chance of  
24 getting these fees ever, you found value in the fact that the  
25 collateral manager had the ability to direct the course of the

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Garg - Cross

1 activist litigations to determine whether to settle those  
2 litigations, correct?

3 A. Yes.

4 Q. Just for the record, from 2015 to 2018, did TAM or Phoenix  
5 Structured Credit receive any subordinate management or  
6 incentive fees?

7 A. I don't think so.

8 Q. This was the case even though Phoenix had been providing  
9 services to the Triaxx CDOs since 2011?

10 A. That's correct.

11 Q. Are you aware that two of the three of the Triaxx CDOs are  
12 in default?

13 A. Is it a payment default or a technical default?

14 Q. Event of default under the indenture.

15 A. What kind of event of default?

16 Q. I was asking if you were aware.

17 A. No, I'm not aware.

18 MS. BUCKEL: That's all the questions I have.

19 THE COURT: Thank you very much.

20 Do the issuers have any questions for Mr. Garg?

21 MR. RAINIER: We do not, your Honor.

22 THE COURT: You do not.

23 Any redirect, Ms. Beaumont?

24 MS. BEAUMONT: I do.

25 THE COURT: Give me a time estimate if you would.

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Garg - Redirect

1 MS. BEAUMONT: I think it should be less than 10  
2 minutes.

3 THE COURT: Thank you.

4 MS. BEAUMONT: First I would like to renew my  
5 objection to the testimony regarding the case in New York State  
6 Supreme Court brought by Mr. Black, and I would move to strike  
7 that testimony.

8 THE COURT: The exhibit didn't come in, and as far as  
9 the testimony got, to the best of my recollection, is that  
10 there was a case filed in State Supreme Court by the limited  
11 partners that this witness thinks is a nuisance case. Does  
12 that harm you?

13 MS. BEAUMONT: I can live with that.

14 THE COURT: You can live with that. Let's move on.

15 REDIRECT EXAMINATION

16 BY MS. BEAUMONT:

17 Q. Good afternoon, Mr. Garg.

18 A. Good afternoon.

19 Q. Is it true that any profits from the engagement of PRES by  
20 the Triaxx CDOs have flowed primarily to you?

21 A. No.

22 Q. Can you explain.

23 A. So, in order for me to have received a bonus from Phoenix  
24 Cayman, the general partner, the Triaxx CDOs would have to have  
25 generated recoveries. Those recoveries would have had to have

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Garg - Redirect

1 been substantial enough to generate an incentive fee pay. That  
2 incentive fee payment would have had to have been substantial  
3 enough to pay off all the expenses for the work that was done.  
4 The work that was -- any profit from that would then have to go  
5 up to the limited partners of Phoenix Holdco. They would have  
6 to get paid first plus their economic rate of return. Then  
7 after all that, then we would have, me and my partners, would  
8 have the ability to enjoy some profit recovery.

9 Q. Do you also have an ownership interest in Triaxx Holdco,  
10 correct?

11 THE COURT: Can we pause there. Mr. Garg, you meant  
12 with you and your partners at what entity?

13 THE WITNESS: At Phoenix Cayman Limited.

14 THE COURT: Okay.

15 Q. Mr. Garg, you've you have an ownership interest in Triaxx  
16 Holdco, correct?

17 A. I do.

18 Q. Can you please explain what would have to happen for you  
19 personally to receive a penny through your ownership interest  
20 in Triaxx Holdco?

21 A. All of the noteholders and all of the Triaxx deals would  
22 likely have to get paid their full principal and interest, and  
23 then whatever moneys were outstanding would flow into the  
24 accrued but unpaid subordinate management fees, and then from  
25 there, those -- the bulk of those accrued and subordinate

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Garg - Redirect

1 management fees would go and be paid to the investors in PSCIL,  
2 with the small remainder left for Triaxx Holdco.

3 Q. We've heard today about a number of agreements entered into  
4 in March of 2011. Do you recall that?

5 A. I do.

6 Q. And you put some money into the execution of those various  
7 agreements?

8 A. I did.

9 Q. About how much?

10 A. Our legal fees were about \$400,000.

11 Q. Did you make any investments in capital investments in  
12 those?

13 A. I personally invested \$500,000.

14 THE COURT: The \$400,000 in legal fees was with  
15 respect to the various 2011 deal documents?

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 Q. Judge Moses asked you a question regarding a scenario in  
19 which one of the CUSIPs improved in value by \$501,000. Do you  
20 recall that?

21 A. I do.

22 Q. Did that scenario ever materialize?

23 A. No. Most of the CUSIPs received recoveries in the millions  
24 of dollars.

25 Q. Do you know if PRES ever received incentive fees for

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Garg - Redirect

1 anything to date, other than the Countrywide settlement?

2 A. It received an incentive fee for a settlement with First  
3 Horizon. It received -- and its own incentive fees for  
4 settlements that have yet to fully materialize through the  
5 waterfall, but I think it's only received fees for Countrywide  
6 and First Horizon.

7 Q. If you'll turn to tab 22 in the binder Mr. Savla gave you  
8 first thing this morning.

9 THE COURT: If I could pause you for one moment,  
10 Ms. Beaumont. Do we know the Horizon case by some other name?

11 MS. BEAUMONT: No. It's First Horizon.

12 THE COURT: That is not something we discussed with  
13 Mr. Moon.

14 MS. BEAUMONT: I don't think we heard about it from  
15 Mr. Moon. I think it appears in some of the documents that he  
16 discussed, but I'm not sure he personally spoke about it.

17 THE COURT: All right.

18 Q. So tab 22 in the first binder we looked at this morning.

19 THE COURT: The first binder.

20 MS. BEAUMONT: Yes. So that's Trial Exhibit 2098.

21 Q. Do you have that there?

22 A. Yes.

23 Q. That's a group of invoices from Phoenix from PRES?

24 A. Yes.

25 Q. What's the date of those invoices?

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Garg - Redirect

1 A. July 20, 2018.

2 Q. Do you happen to know if those were dated after the filing  
3 of this lawsuit?

4 A. I don't remember when this lawsuit was filed.

5 Q. Do you happen to know if PRES has received payment on any  
6 of those invoices?

7 A. Oh, no. PRES hasn't been paid since 2018.

8 Q. Who put up the money for Triaxx Holdco to purchase ICP in  
9 2015?

10 A. I did.

11 Q. Then just two more small things. One is, you mentioned  
12 this morning, there was a reference to the RAST shelf?

13 A. Yes.

14 Q. Can you explain what a shelf is.

15 A. A shelf is a group of mortgage backed securities, so  
16 mortgage backed securities, let's say a bank like Wells Fargo  
17 would create a shelf, and all the deals in the shelf would have  
18 the same legal documents, just that the underlying collateral  
19 pool would be different. So, you would have let's say Wells  
20 Fargo 2007 -- WFSBS is the shelf, and you have 2007-1, 2007-2,  
21 2007-3, and they would be sequential and the loan pools  
22 themselves are different, but the legal documents are all the  
23 same.

24 Q. Thank you. Then, lastly, there was a mention in some  
25 deposition testimony that we heard this morning where you



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Garg - Recross

1 mentioned the fact that you believed that PIMCO had bought some  
2 of its Triaxx notes from something called Maiden Lane?

3 A. Yes.

4 Q. What was the significance of that?

5 A. Well, PIMCO purchased Maiden Lane was 1, 2 and 3 were  
6 different vehicles created by the government. Maiden Lane 2  
7 and 3 were for the bailout of AIG. AIG was the original owner  
8 of the bonds.

9 THE COURT: You have to slow down a little bit.

10 THE WITNESS: So sorry.

11 A. Then the government took them over and the Maiden Lane  
12 vehicle. And then it's my understanding that PIMCO bought the  
13 bonds for something like 70 cents on the dollar.

14 MS. BEAUMONT: I have no further questions.

15 THE COURT: Is there any recross? I'll ask PIMCO  
16 first.

17 MR. SAVLA: Very quick recross.

18 THE COURT: Go ahead, Mr. Savla.

19 RE CROSS EXAMINATION

20 BY MR. SAVLA:

21 Q. Mr. Garg, Ms. Beaumont asked you if profits flowed to you,  
22 correct?

23 A. Yes.

24 Q. And you said, as I understood it, you said that profits  
25 would have to go first to the L.P.s of Phoenix Holdco?

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Garg - Recross

1 A. Yes.

2 Q. And then, you would only receive a bonus from Phoenix  
3 Cayman if the Triaxx CDOs generated recoveries, correct?

4 A. No. I would receive a bonus from Phoenix Cayman if there  
5 was profits that flowed to Phoenix Cayman.

6 Q. Okay. And there weren't distributions to Asian Castle,  
7 correct?

8 A. There were no distributions to Asian Castle.

9 Q. And if I understood your testimony correctly, money did not  
10 flow to Asian Castle from PRES?

11 A. No, it never did.

12 Q. So let's look at Exhibit 3249 which is not in evidence.  
13 And so this is an invoice dated done in the European style, so  
14 November 15, 2014, correct?

15 A. Yes.

16 Q. And this invoice was kept in the regular course of  
17 business, correct?

18 A. Yes, no. It's actually not the regular course of business  
19 because this is -- I referenced this earlier. For that period  
20 of time when HSBC shut down for two or three months, we had to  
21 create an escrow account at HSBC in Hong Kong. These were  
22 escrow accounts that were created for the moneys and the bills  
23 to be paid through that. And so, as you can see, there is an  
24 Asian Castle transaction account.

25 THE COURT: I think, Mr. Garg, you were getting a

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Garg - Recross

1 little ahead of the question you were being asked.

2 Q. So the document was created in the regular course of  
3 business, correct?

4 A. The document was created.

5 Q. And maintained in the regular course of business?

6 A. That's correct.

7 MR. SAVLA: Your Honor, we move to admit Exhibit 3429.

8 THE COURT: 3429 is admitted.

9 (Joint Exhibit 3429 received in evidence)

10 Q. And this document shows a wire of funds to Asian Castle,  
11 correct?

12 A. To an escrow account at Asian Castle, yeah.

13 Q. Let's look at another exhibit, Exhibit 3273. And this is  
14 another invoice, this is for the 2007-1 transaction, and it's  
15 December 15, 2014, correct?

16 A. Hmm-hmm.

17 Q. This document was created in the regular course of  
18 business, correct?

19 A. It was.

20 Q. And it was maintained in the regular course of business?

21 A. It was.

22 MR. SAVLA: Your Honor, I move to admit this document,  
23 Exhibit 3273.

24 MS. BEAUMONT: No objection.

25 THE COURT: 3273 is admitted.

N4J3USB4

Garg - Recross

1 (Joint Exhibit 3273 received in evidence)

2 Q. And this also shows an invoice asking wire funds to Asian  
3 Castle. Correct?

4 A. That's correct.

5 MR. SAVLA: No further questions.

6 THE COURT: Is there any recross by the trustee?

7 MS. BUCKEL: Two questions, your Honor.

8 THE COURT: Two questions.

9 RECROSS EXAMINATION

10 BY MS. BUCKEL:

11 Q. Mr. Garg, you testified in response to Ms. Beaumont's  
12 question that the flow of funds from PRES didn't really go up  
13 to you, is that correct?

14 MS. BEAUMONT: Objection. Misstates the testimony.

15 THE COURT: That's a preliminary question to orient  
16 the witness as to what the topic is. I'll permit it.

17 Q. Mr. Garg, are you aware that over \$30 million has been  
18 provided to or has been paid to Phoenix inside the priority of  
19 payments waterfall?

20 A. That seems --

21 THE COURT: She means PRES.

22 Q. PRES. Over \$20 million has been paid to PRES outside of  
23 the priority of payments waterfall?

24 A. Yes.

25 Q. And you just testified that PRES has received incentive

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Garg

1 fees from Countrywide and something called First Horizon?

2 A. That's correct.

3 Q. Those are the only invoices for incentive fees that PRES  
4 has submitted?

5 A. I believe so.

6 MS. BEAUMONT: Objection.

7 THE COURT: Overruled.

8 Q. Are you aware that this action involves an interpleader  
9 claim concerning \$18.25 million in incentive fee invoices from  
10 PRES?

11 A. Yes.

12 Q. These incentive fee invoices are from what action?

13 A. I don't have a copy of those invoices, but if you show me  
14 the copy, then I could tell you.

15 Q. If I would show you what action they are coming from. I am  
16 asking you, do you know what these incentive fee invoices are  
17 from?

18 A. I don't know until I see the invoice.

19 MS. BUCKEL: No further questions.

20 THE COURT: Anybody else?

21 I have just a couple of questions for you, Mr. Garg.  
22 And because I'm the judge, I can't guarantee you that I'll stop  
23 at two. Let's see how we go.

24 You testified earlier today that pursuant to the 2011  
25 contract with PSD partners, PSD was paid I think your phrase

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1 was several million dollars. Do you recall that testimony?

2 THE WITNESS: Yeah.

3 THE COURT: Can you sharpen that up for me a bit. Can  
4 you recall how many millions?

5 THE WITNESS: I think it was 2.75 million.

6 THE COURT: 2.75. And is that agreement, the PSD  
7 agreement still in effect?

8 THE WITNESS: It's never been terminated. So I would  
9 assume it's in effect, yes.

10 THE COURT: Is there a possibility, depending on how  
11 the business goes and possibly how this case turns out, that  
12 additional funds will flow to the Piores through the PSD  
13 agreement?

14 THE WITNESS: Not likely. Only because so much of  
15 this is invoices that were due and payable back in 2018, '19,  
16 '20, and we did the work on them. And it's unlikely that,  
17 depending on where this all falls out, the costs would be -- it  
18 would likely be the costs would be enough that there would be  
19 no recovery -- this would be no surplus profit.  
20 Historically --

21 THE COURT: What's the phrase?

22 THE WITNESS: Net cash flow, yeah.

23 THE COURT: But you can't do the math in your head so  
24 you can't be sure of that.

25 THE WITNESS: Well, I basically know that we would

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1 have to pay out, if we were to -- if we were to receive the  
2 amounts that are owed to us, as Phoenix, then between the legal  
3 fees that have been incurred, new bonuses that have been  
4 accrued, the costs that have been incurred, that there is no  
5 likelihood of payment.

6 THE COURT: When you say the bonuses that have been  
7 accrued, do you mean bonuses within your organization to folks  
8 like Mr. Jonsson and Dr. Tang?

9 THE WITNESS: Yes.

10 THE COURT: Those you would consider, those would have  
11 to be netted out before any money would go under the --

12 THE WITNESS: Yeah.

13 THE COURT: What's it called, PSD contract?

14 THE WITNESS: Yeah.

15 THE COURT: What are the rough estimate here, what are  
16 the accrued bonuses that folks like Dr. Tang and Mr. Jonsson  
17 are still hoping one day to receive?

18 THE WITNESS: The amount is slightly larger than in  
19 the past, only because it's highly unlikely there is going to  
20 be anything else after that. If the contracts don't continue,  
21 there is no additional recoveries possible, then I think the  
22 amount is something like \$5 million.

23 THE COURT: Amongst how many individuals?

24 THE WITNESS: Five.

25 THE COURT: And name those individuals for me if you

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1 would.

2 THE WITNESS: Dom Savino, Mingsung Tang, Nick  
3 Calamari, myself, and Ziggy Jonsson.

4 THE COURT: So, you named yourself in that group. Do  
5 you recall the amount of your accrued bonus?

6 THE WITNESS: I think mine would be about a million  
7 dollars.

8 THE COURT: And did you pay yourself any bonus that  
9 was actually paid and not accrued along the way?

10 THE WITNESS: The total amount of money I made outside  
11 from the directors' fees?

12 THE COURT: The directors' fees we looked at earlier,  
13 it was I think \$800,000 for a particular period of years and  
14 then there was some that accrued as well.

15 THE WITNESS: Aside from the director fees, I think  
16 the amount that I've gotten is something close to \$2 million.

17 THE COURT: You've gotten that in the form of  
18 discretionary bonuses within your organization?

19 THE WITNESS: Yes, within Phoenix Cayman, yes.

20 THE COURT: You have another approximately one million  
21 in bonuses that are awarded but not paid.

22 THE WITNESS: They haven't been awarded yet, but would  
23 likely be awarded.

24 THE COURT: Can you explain that for me.

25 THE WITNESS: If I was to award them, then I would



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1 have to pay taxes on them immediately. So I would be accruing  
2 something I don't necessarily know whether I am going to get.

3 THE COURT: You are not carrying these bonuses on your  
4 books.

5 THE WITNESS: No.

6 THE COURT: So where does the \$5 million figure come  
7 from? Is it what you internally are planning to do if you win  
8 this lawsuit?

9 THE WITNESS: Yes.

10 THE COURT: One of the things you would do is pay  
11 yourself another million dollars roughly.

12 THE WITNESS: I would.

13 THE COURT: All right. And how much to Mr. Calamari?

14 THE WITNESS: We would likely split it evenly across  
15 the board.

16 THE COURT: So a million apiece.

17 THE WITNESS: Yes.

18 THE COURT: That's contingent largely on how this  
19 lawsuit comes out at this point.

20 THE WITNESS: That's correct.

21 THE COURT: Speaking of taxes, you mentioned taxes a  
22 moment ago. I don't know if taxes are the answer or not. But  
23 one thing I've been wondering throughout the day as we look at  
24 these complicated org charts and we see that various  
25 individuals have a limited partner ownership here, and a

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1 consulting agreement here, and get a bonus from somewhere else,  
2 and they are an employee of someone else, and there is a  
3 contract and a subcontract and a sub-subcontract.

4 Why do you do that way? What is the advantage of this  
5 extraordinarily complex corporate structure as compared to, for  
6 example, simply putting Dr. Tang or Mr. Jonsson on the payroll  
7 of PRES, and paying them salary, and, if appropriate, bonus  
8 through the organization they actually had the contract to do  
9 the work at the Triaxx CDOs?

10 THE WITNESS: There were two reasons. The first is --  
11 three reasons, actually. The first reason is the entities were  
12 set up as offshore companies to deal with an offshore CDO and  
13 offshore investors. So the bulk of the high net worth  
14 investors were offshore individuals, so they didn't want --  
15 they wanted the entity that they were receiving distributions  
16 from to be an offshore entity.

17 THE COURT: That's Phoenix Holdco.

18 THE WITNESS: That's Phoenix Holdco. So we started  
19 with the bulk of the investors in the Phoenix transaction are  
20 foreign individuals, so they wanted a foreign entity. So we  
21 started with that.

22 Then from there, we started an additional layer of  
23 complication, which is the work has to be done by a U.S.  
24 entity. The reason why the work has to be done by the U.S.  
25 entity, is the U.S. entity is entering into contracts with

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1 things like credit bureaus, land registries, title insurance  
2 companies, and the like, and those companies will not do  
3 business or transport U.S. consumer data to a non-U.S. company.

4 THE COURT: And Phoenix Real Estate Solutions Limited,  
5 PRES, is what?

6 THE WITNESS: A Cayman Island company.

7 THE COURT: Is there another reason why it is a Cayman  
8 Island company?

9 THE WITNESS: The original idea was that it would  
10 contract with other CDOs as well. And some of those CDOs were  
11 offshore. And some of those CDOs could contain -- so your  
12 Honor, when we were doing this, we were trying to buy basically  
13 all the broken vehicles. So we were trying to buy German  
14 banks, Irish subsidiaries, we were trying to buy other CDOs, we  
15 were trying to basically buy as much collateral as we could,  
16 because when we aggregated the collateral together --

17 THE COURT: You would have economies of scale.

18 THE WITNESS: Economies of scale.

19 THE COURT: But you only got as far as the Triaxx  
20 CDOs.

21 THE WITNESS: Yes, because everybody started fighting.

22 THE COURT: So you were telling me some of the reasons  
23 why I am looking at such a complicated structure here. You  
24 started with the fact that the limited partners are offshore  
25 individuals who wanted an offshore vehicle, whereas you say for

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1 purposes of acquiring and manipulating U.S. based data, you  
2 need a U.S. entity.

3 THE WITNESS: Yes.

4 THE COURT: What else?

5 THE WITNESS: So that's two reasons. And then the  
6 third is basically, in each of these litigations that we were  
7 undertaking, like when we were, for instance, pushing very hard  
8 against Countrywide, if the entity that controls the  
9 intellectual property gets sued by Countrywide back, so we're  
10 out there doing all this research, we are saying Countrywide  
11 made all these bad loans. Now there is going to be a  
12 counterclaim. If the -- from Countrywide saying your research  
13 is wrong. You're saying the wrong things.

14 THE COURT: I am trying to imagine how that could be a  
15 counterclaim.

16 THE WITNESS: Let's say they sue us. Then we encumber  
17 the intellectual property. We wanted to create a vehicle where  
18 the vehicle that does the work and the suing is different than  
19 the vehicle that contains the intellectual property.

20 THE COURT: Just in case somebody sued the company  
21 that was doing the suing.

22 THE WITNESS: That's right.

23 THE COURT: Did anyone ever sue the company that was  
24 doing the suing?

25 THE WITNESS: We didn't have that happen.

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Garg

1 THE COURT: Okay. Any other reasons?

2 THE WITNESS: No.

3 THE COURT: All right. There was some testimony  
4 during the day today about the activist fee which was paid on a  
5 per CUSIP basis. There was a portion of it that was paid  
6 monthly up to a 25 month cap. And there was a portion that was  
7 paid as what you sometimes called an incentive fee of \$250,000,  
8 which you think was stackable, and some other folks in this  
9 room think it was not intended to be stackable, on top of the  
10 monthly. But that's not what I am asking you about at the  
11 moment.

12 Across the three Triaxx CDOs, how many deals were  
13 there, how many CUSIPs?

14 THE WITNESS: About 200.

15 THE COURT: About 200. And in Exhibit 2045, which you  
16 don't, I don't think you have to turn to at the moment. You  
17 probably remember it. This is the e-mail about having 30  
18 activist positions and rotating the positions in.

19 THE WITNESS: Yes.

20 THE COURT: Is there some reason why you had 30  
21 activist positions, 30 CUSIPs, that you were at that time  
22 earning monthly fees on? Was there some limit to how many  
23 CUSIPs you could earn the monthly fee on?

24 THE WITNESS: No. There was also just a limit to the  
25 amount of work we could do. So, we couldn't really manage more

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Garg

1 than 30 deals at the same time.

2 THE COURT: Were you ever charging that monthly fee on  
3 more than 30 CUSIPs at a time?

4 THE WITNESS: I doubt it.

5 THE COURT: Were you ever charging that monthly fee on  
6 less than 30 CUSIPs?

7 THE WITNESS: In some times, yes. When the  
8 Countrywide deal stopped, when we got the settlement for the  
9 Countrywide deal, a bunch of the CUSIPs were Countrywide CUSIPs  
10 and we had to get ramped up on other things. So we were  
11 charging less during those times.

12 THE COURT: Did you ever -- when I say you, I mean  
13 PRES -- did you ever charge that \$250,000 incentive fee on a  
14 security, on a CUSIP, that you did not previously consider an  
15 activist position, that is, you did not previously charge a  
16 monthly fee on?

17 THE WITNESS: No.

18 THE COURT: So if we see an incentive fee of \$250,000  
19 fee invoiced, that would be on a position that was in the  
20 rotation, if I can use that phrase, as an activist --

21 THE WITNESS: Yes.

22 THE COURT: -- position.

23 Let me just look at my notes and see if there is  
24 anything else I needed you to clear up. I think that is all of  
25 the questions that the Court has. If I've messed anything up

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1 for anyone, I'll give you a brief opportunity to clear it up.

2 All right. So you are excused, Mr. Garg. Thank you  
3 for your testimony.

4 (Witness excused)

5 THE COURT: It is about 3:37. Hopefully we'll get  
6 started with Mr. Calamari. Should we take a quick break now as  
7 we're changing witnesses? Let's do that. 10 minutes.

8 (Recess)

9 THE COURT: Do I understand we have had a change of  
10 horses for one of the parties?

11 MR. RAINIER: Yes, your Honor. For the issuers, you  
12 might recall at the pretrial conference we indicated that  
13 Mr. Ledley might sit in. He's here at counsel's table, and  
14 I'll be stepping away.

15 THE COURT: So, Mr. Rainier is leaving us at least  
16 temporarily and Mr. Ledley is joining us. Thank you both very  
17 much.

18 MR. LEDLEY: Good afternoon, your Honor.

19 THE COURT: Good afternoon. You may be seated.

20 All right. Do we have a witness?

21 MS. BEAUMONT: I guess the TAM parties -- I am not  
22 sure who is calling him.

23 THE COURT: I think you are calling him.

24 MS. BEAUMONT: The TAM parties call Nicholas Calamari.

25 (Witness sworn)

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Calamari - Direct

1 MS. BEAUMONT: May I approach the witness?

2 THE COURT: You may. Make room for a new binder here.

3 NICHOLAS CALAMARI,

4 called as a witness by the Defendant,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BEAUMONT:

8 Q. Mr. Calamari, I've given you a binder that contains a  
9 document titled corrected trial declaration of Nicholas J.  
10 Calamari.

11 Do you see that?

12 A. Yes.

13 Q. Is that your direct testimony in this case?

14 A. Yes, it is.

15 Q. I understand you wanted to make a correction to paragraph  
16 4.

17 A. Yes. In my preparation for trial, I noticed that in the  
18 last paragraph, or the last sentence of paragraph 4, it says I  
19 served as outside general counsel of PRES from approximately  
20 February 2014 to October 2016. February of 2014 should be  
21 February 2015.

22 Q. It should be --

23 A. February of 2015.

24 MS. BEAUMONT: I tender the witness for  
25 cross-examination.



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Calamari - Direct

1 THE COURT: So, Mr. Calamari, with that exception, is  
2 your corrected trial declaration to your knowledge true and  
3 complete?

4 THE WITNESS: Yes, it is.

5 THE COURT: Cross-examination.

6 MR. LORENZO: Before I do that, do we need to enter  
7 that?

8 THE COURT: Well, you know the rules. Everybody's  
9 direct testimony gets filed on the docket at the end of the  
10 trial day. The transcript will reflect the witness's  
11 correction which he made after he was placed under oath, so I  
12 think we're covered.

13 MS. BEAUMONT: Your Honor, just to be clear. The  
14 correction that's referred to in the title of the document was  
15 the correction that was made to correct the exhibit numbers  
16 that we discussed --

17 THE COURT: I understand this is a new correction.

18 MS. BEAUMONT: Correct.

19 THE COURT: So because I have the corrected trial  
20 declaration in front of me, and it has a different date in it.

21 MS. BEAUMONT: That's right.

22 THE COURT: Everybody is on the same page. We're all  
23 keeping up.

24 Okay, Mr. Lorenzo.

25 MR. LORENZO: Your Honor, if I have permission to

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Calamari - Cross

1 approach with witness binders.

2 THE COURT: You may.

3 CROSS-EXAMINATION

4 BY MR. LORENZO:

5 Q. Good afternoon, Mr. Calamari. My name is Alex Lorenzo.

6 I'm an attorney with Alston & Bird and we represent U.S. Bank  
7 National Association as trustee in this litigation.

8 I am going to be asking you some questions this  
9 afternoon. And I am going to start off first with a little bit  
10 about your background.

11 You joined 1/0 Capital LLC in 2014, correct?

12 A. Yes.

13 Q. And you were general counsel and partner there, correct?

14 A. Yes.

15 Q. And eventually became a senior partner there, is that  
16 correct?

17 A. Yes.

18 Q. And as general counsel, you served as general counsel for a  
19 variety of 1/0 Capital subsidiary companies, correct?

20 A. Yes.

21 Q. This list of subsidiary companies at 1/0 Capital where you  
22 served as general counsel, it includes The Number, and Phoenix  
23 Real Estate Solutions or PRES, is that correct?

24 A. That's not correct. I wouldn't consider PRES to be part of  
25 the 1/0 family of companies.

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Calamari - Cross

1 Q. So, would you consider The Number to be part of the 1/0  
2 family of companies?

3 A. Yes.

4 Q. And you served as general counsel at The Number?

5 A. Yes.

6 Q. Understanding that you don't consider PRES and I guess I  
7 should pause there and say does it work to refer to Phoenix  
8 Real Estate Solutions as PRES?

9 A. Yes.

10 Q. Understanding you don't consider PRES to be part of the 1/0  
11 family of companies, did you also serve as general counsel to  
12 PRES?

13 A. Yes.

14 Q. Did you serve as general counsel of Phoenix Advisors &  
15 Managers?

16 A. Yes.

17 Q. Do you consider Phoenix Advisors & Managers to be part of  
18 the 1/0 Capital family of companies?

19 A. Yes.

20 Q. Did you also serve as the general counsel of Triaxx Asset  
21 Management?

22 A. Yes.

23 Q. Do you consider Triaxx Asset Management to be a part of the  
24 1/0 family of companies?

25 A. No.

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Calamari - Cross

1 Q. For all of these companies that you served as general  
2 counsel, your compensation was solely through 1/0 Capital,  
3 correct?

4 A. No, that's not correct.

5 Q. Were you paid directly by any of the entities for which you  
6 served as general counsel?

7 A. Yes. Phoenix Real Estate Solutions paid me directly for  
8 work that I performed in connection with an arbitration.

9 Q. Was that a \$250,000 payment for responding to an  
10 arbitration demand that you are referring to?

11 A. It was a \$250,000 invoice that I believe was paid in two  
12 separate payments of \$125,000.

13 Q. Other than those two \$125,000 payments, did you receive any  
14 compensation for the companies?

15 A. Did you say two?

16 Q. So, other than that \$250,000 that you just testified to,  
17 did you receive any other compensation from any of the  
18 companies that we just listed where you served as general  
19 counsel?

20 A. No.

21 Q. And in fact, all of the other compensation you received in  
22 your role as general counsel for these companies, it came  
23 through 1/0 Capital, correct?

24 A. Yes, in terms of cash.

25 Actually to go back and amend my previous answer.

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Calamari - Cross

1 Some of the companies I was general counsel for provided me  
2 with equity compensation directly in those entities, but not  
3 cash.

4 Q. It's like you are anticipating my next question which  
5 related to your ownership interest in some of these companies.

6 So, of the companies that we just went through, and  
7 I'll start with The Number, did you have an ownership interest  
8 in The Number?

9 A. Yes.

10 Q. What was or is that ownership interest?

11 A. I don't recall sitting here today. Likely something less  
12 than 10 percent. Probably less than 5.

13 Q. How about Phoenix Real Estate Solutions, do you currently  
14 have an ownership interest in PRES?

15 A. I have never had an ownership of any kind in PRES.

16 Q. The same question for Phoenix Advisors & Managers.

17 A. Yes, sort of it changed a little bit over time. But, no  
18 excuse me. It did not. I have no direct equity interest in  
19 Phoenix Advisors & Managers.

20 Q. You clarified that or mentioned direct equity interest. Do  
21 you have an indirect equity interest?

22 A. Yes.

23 Q. And how is that indirect equity interest connected to  
24 Phoenix Advisors & Managers?

25 A. Phoenix Advisors & Managers is owned 100 percent by 1/0

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Calamari - Cross

1 Holdco. Although I think at one point it might have  
2 transferred, put underneath The Number. But either way, my  
3 equity ownership in 1/0 Holdco would provide me with an  
4 indirect ownership interest in Phoenix Advisors & Managers.

5 Q. Then, the same question about your equity ownership  
6 interest for Triaxx Asset Management. Do you have an equity  
7 ownership in Triaxx Asset Management?

8 A. Not directly in TAM, but indirectly, yes.

9 Q. Can you explain what you mean by indirectly?

10 A. Yes. Triaxx Advisors & Managers is owned 100 percent by a  
11 entity called Triaxx Holdco, and I am a 45 percent owner of  
12 Triaxx Holdco.

13 Q. Did you pay anything for that ownership interest?

14 A. No.

15 Q. That ownership interest was compensation for your work as  
16 general counsel of TAM?

17 A. Yes, general counsel, chief compliance officer; all the  
18 duties I performed there.

19 Q. So you just mentioned when you were the general counsel of  
20 TAM, you were also the chief compliance officer. Is that  
21 correct?

22 A. Yes.

23 Q. Was one of your responsibilities as chief compliance  
24 officer to file what's referred to as the form ADV?

25 A. Yes.

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Calamari - Cross

1 Q. And what is the form ADV?

2 A. The form ADV is a document that is filed with the SEC and  
3 subsequently publicly available on the internet.

4 Q. So, the form ADV is going to be the first exhibit that we  
5 look at, so if you open up your binder to tab 2. It is a  
6 document that has been marked as Exhibit 1099, and it has  
7 already been admitted into evidence.

8 This is a copy of a form ADV that Triaxx Asset  
9 Management submitted, correct?

10 A. Yes, it appears to be.

11 Q. And this document is dated March 30, 2016, correct?

12 A. Yes.

13 Q. And the form ADV includes a disclosure of TAM of conflicts  
14 of interest, correct?

15 A. Yes.

16 Q. So let's turn to page 10 which has the Bates number ending  
17 in 824.

18 A. Yes.

19 Q. And on page 10, rather, it notes that PAM is an entity  
20 indirectly owned by the controlling member of Triaxx, and that  
21 PAM receives a fee from PRES; is that correct?

22 A. I don't know specifically, but that sounds right.

23 Q. If we look just at the first full paragraph sort of a  
24 little bit down the page, and Mr. Gibson has highlighted that  
25 for us.

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Calamari - Cross

1 A. Yes.

2 Q. And then a little bit farther down, in I guess the third  
3 full paragraph, it says: "The revenues and fees earned by PRES  
4 and PAM indirectly benefit the controlling member of Triaxx."

5 Do you see that?

6 A. Yes.

7 Q. And the controlling member of Triaxx, is that Mr. Garg?

8 A. I'm not sure if it is Mr. Garg or Triaxx Holdco, but it  
9 would be one of those two.

10 Q. And Triaxx Holdco is owned jointly by you and Mr. Garg,  
11 correct?

12 A. Yes.

13 Q. So, the fees earned by PAM, is it fair to say they  
14 indirectly benefited both you and Mr. Garg?

15 A. Yes.

16 Q. Keeping at the same place, just looking at the next  
17 sentence, it reads: "Such indirect benefits relating to PRES  
18 and PAM could result in potential conflicts of interest."

19 Do you see that?

20 A. Yes.

21 Q. And would it be fair to say an example of potential  
22 conflict of interest is if the collateral manager agreed to  
23 increase the amount of fees that PRES was entitled to?

24 A. Yes.

25 Q. As we continue there, same paragraph, just going on to the



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Calamari - Cross

1 next sentence. The document says: "In order to mitigate such  
2 potential conflicts of interest, TAM has established a code of  
3 ethics that requires it and its supervised persons to always  
4 act in the best interests of its clients, including in entering  
5 into agreements for services to be rendered by third parties,  
6 to TAM and its current clients."

7 Do you see that?

8 A. Yes.

9 Q. You understand TAM's clients to be the Triaxx CDOs,  
10 correct?

11 A. Yes.

12 Q. So, this code of ethics referenced herein require that TAM  
13 always acted in the best interests of the CDOs, correct?

14 A. Yes.

15 Q. And is it fair to say acting in best interests of the CDOs  
16 means acting pursuant to the terms set out in the indentures of  
17 the CDOs?

18 A. I think I would need to know the specifics of the situation  
19 that we're talking about.

20 Q. Well, I am trying to understand, this document says that  
21 the code of ethics requires TAM to act in the best interests of  
22 the CDOs, right?

23 A. Yes.

24 Q. So I'm trying to understand what that means. Do you have  
25 an understanding of what that means?

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Calamari - Cross

1 A. Generally, yes. You would act in their best interest and  
2 not do anything that was contrary to their interests.

3 Q. Right. So I am saying, when you talk about acting in the  
4 best interests of an entity like a CDO, right. Does that mean  
5 acting in accordance with the terms of the governing documents  
6 for the CDOs, including the indentures?

7 A. Presumably, unless those documents were telling you to do  
8 something that would be harmful to the CDOs somehow. It is a  
9 little bit abstract. But generally, yes, I would want to  
10 follow the indentures. But the specifics of the situation  
11 would be helpful to flesh that out.

12 Q. Let's go now to tab 11 in your binder. It is a document  
13 that has been marked Exhibit 1069 and has not yet been  
14 admitted. Do you recognize this document?

15 A. Yes.

16 Q. What is it?

17 A. It appears to be the code of ethics and policies procedures  
18 for ICP Asset Management LLC.

19 Q. This document is dated effective April 20, 2015, correct?

20 A. Yes.

21 MR. LORENZO: We ask the Court to move Exhibit 1069  
22 into evidence.

23 MS. BEAUMONT: No objection.

24 THE COURT: 1069 is admitted.

25 (Joint Exhibit 1069 received in evidence)

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Calamari - Cross

1 Q. If you flip now to tab 12 of your binder, and this has been  
2 marked as Exhibit 1200. Another exhibit that has not yet been  
3 admitted into evidence. If you see the first page says  
4 privilege withheld. That's in relation to the production. But  
5 if you flip it over, the title of the document is code of  
6 ethics. Do you see that on page ending in Bates stamp 048?

7 A. Yes.

8 Q. Do you recognize this document?

9 A. Not specifically. But, give me a second.

10 This looks familiar to me. The reason why I'm pausing  
11 is just because I only see references to the firm and clients  
12 and nothing that specifically ties it back to Triaxx or ICP.  
13 But, this document's familiar to me.

14 Q. And when you say this document is familiar to you. Do you  
15 have an understanding of what that document is?

16 A. I mean, I believe it is the code of ethics we've been  
17 referring to previously. But, again, I don't see a date on  
18 this document. So it is a little difficult to place.

19 MR. LORENZO: We request that the Court move into  
20 evidence Exhibit 1200.

21 MS. BEAUMONT: No objection.

22 THE COURT: 1200 is admitted.

23 (Joint Exhibit 1200 received in evidence)

24 Q. Let's talk a little bit now about PRES' work for the Triaxx  
25 CDOs. Is it your understanding that the Triaxx CDOs had a

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Calamari - Cross

1 relationship with PRES?

2 A. Yes.

3 Q. That relationship was memorialized in what we've been  
4 referring to here as the engagement agreements. Is that  
5 correct?

6 A. Yes.

7 Q. Did PRES have any other clients, other than the Triaxx  
8 CDOs?

9 A. I don't believe so.

10 Q. And initially when PRES was engaged by the Triaxx CDOs, it  
11 subcontracted the work that it was contracted to do to an  
12 entity called Activist, is that correct?

13 A. Yes.

14 Q. Subsequently PRES subcontracted the work for Triaxx CDOs to  
15 Phoenix Advisors & Managers or PAM, is that correct?

16 A. Yes.

17 Q. And then PAM on behalf of PRES generated work product  
18 related to the PRES engagement with the Triaxx CDOs?

19 A. Yes.

20 Q. Is it your belief that the work product that was generated  
21 by PAM on behalf of PRES is protected by some sort of  
22 privilege?

23 A. Yes.

24 Q. Do you have an understanding of the dividing line between  
25 privileged work product from PRES or PAM and non-privileged

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Calamari - Cross

1 work product?

2 A. Generally.

3 Q. What is that distinction?

4 A. I would say that under -- I mean, under the law there are a  
5 number of different privileges. The one that would be most  
6 applicable here would be the attorney-client privilege.

7 Q. When you refer to the attorney-client privilege appearing  
8 to work from -- does it work to say PRES and that encompasses  
9 PAM, or would you like me to break out PRES and PAM separately?

10 A. It might depend upon the question.

11 Q. When you are talking about a litigation work product for --  
12 let's start with PAM's work. What litigation are you referring  
13 to that might apply and create a privilege?

14 A. The Triaxx CDOs were engaged in a number of activist  
15 litigations. PRES and PAM supported them in this effort. And  
16 so, that's the first thing that comes to mind. It would be in  
17 connection with the work that they did in connection with those  
18 activist litigations.

19 Q. Is it your understanding that any work that PAM or PRES did  
20 in connection with the activist litigations would be privileged  
21 such that it couldn't be disclosed in this litigation?

22 A. Yes.

23 Q. Let's talk a little bit about the Phoenix engagement  
24 agreements, and if I could ask you to flip to tab 3 in your  
25 binder which is Exhibit 10, an exhibit that has been admitted

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Calamari - Cross

1 in this trial.

2 Are you familiar with this document?

3 A. Yes.

4 Q. When was this document executed?

5 A. March 22, 2011.

6 Q. That was before you joined 1/0 Capital and started working  
7 with PRES, correct?

8 A. Yes.

9 Q. So I'll represent that in addition to this agreement, which  
10 appears from the upper-right-hand corner to be for 06-1 that  
11 there were substantially identical agreements for 06-2 and  
12 07-1. Is that your understanding as well?

13 A. Yes.

14 Q. So, when I refer to the engagement agreements in the  
15 plural, does it work to refer to all three of these agreements?

16 A. Yes.

17 Q. So you were not involved in the negotiation of the  
18 engagement agreements, correct?

19 A. No.

20 Q. It is your understanding --

21 THE COURT: Hold on. No, you were not involved, not,  
22 no, he's not correct.

23 THE WITNESS: No, I was not involved.

24 THE COURT: Thank you.

25 MR. LORENZO: Thank you, your Honor.

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Calamari - Cross

1 Q. It is your understanding that these engagement agreements  
2 were entered into in connection with the collateral manager's  
3 activist implementation strategy, correct?

4 A. Yes.

5 Q. When you came on board in January of 2015, as the  
6 collateral manager, was this strategy already in place?

7 A. Yes.

8 Q. These engagement agreements, they set out what compensation  
9 PRES would receive for its work, correct?

10 A. Yes.

11 Q. There would be two types of fees. An activist  
12 implementation fee and a diligence fee, and then an incentive  
13 fee?

14 A. Yes. I think there is also a provision for expenses.

15 Q. So, let's break that down. So, the activist implementation  
16 fee consisted of two subparts; is that correct?

17 A. Yes.

18 Q. So, it's your understanding that first, there was 10,000  
19 per month up to a maximum of 250,000 per RMBS CUSIP, is that  
20 correct?

21 A. Yes.

22 Q. And then it's your position that you have referred to  
23 something as the incentive fee, which was an additional  
24 \$250,000 from any recoveries generated that were more than  
25 500,000?

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Calamari - Cross

1 A. Yes.

2 Q. So let's look at page 4 of Exhibit 10. That's the Bates  
3 stamp ending in 158. There is a section here, section 6,  
4 entitled fees and expenses. Do you see that?

5 A. Yes.

6 Q. And according to this section, it says that ARAM Phoenix's  
7 fees shall be paid as administrative expenses under the  
8 indenture, correct?

9 A. Yes.

10 Q. Is it your understanding that from 2011 to 2014, PRES' fees  
11 were paid as an administrative expense under the indenture?

12 A. Yes.

13 Q. Now would you refer to these payments to Phoenix as within  
14 the waterfall?

15 A. Yes, that makes sense to me. I understand what that means.

16 Q. When we say within the waterfall, we mean paid pursuant to  
17 the terms of the priority of payments waterfall in the  
18 indentures. Does that work?

19 A. Yes.

20 Q. In talking about these fees from 2011 to 2014, were these  
21 payments to Phoenix within the waterfall for incentive fees,  
22 monthly fees, or some combination?

23 A. I believe those were the monthly fees. I would assume the  
24 diligence fees as well, but that predates me.

25 Q. So, moving to sort of around the time you joined and I



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Calamari - Cross

1 understand you joined PRES in 2015. Is that correct?

2 A. That's when I would say sort of official date was. I  
3 believe that's when the engagement agreement was. I certainly  
4 would have provided advice before that earlier. I don't  
5 remember exactly when the outside general counsel would have  
6 attached. So that's when the engagement agreement was signed.  
7 But I believe I was probably providing legal advice to them  
8 prior to that.

9 Q. How did you become outside general counsel of PRES?

10 A. In my memory, what sort of sparked this was in my duties at  
11 1/0, I was going through some mail, and I discovered an  
12 arbitration demand that had been sitting for a long time. I  
13 don't remember how long. But it was seemed like it had been  
14 unattended to. So, we realized or I realized at that point  
15 after discussions with Mr. Garg that no one had been handling  
16 this matter. So, he asked me if I could help out with it and I  
17 agreed to.

18 Q. So, after helping out with this arbitration demand, at some  
19 point you became the general counsel of PRES?

20 A. Yes, I don't know that it was such that we set forth like  
21 an offer letter, you are to become the general counsel. It was  
22 more of, there was arbitration appearances and things happening  
23 and so, therefore, I was not appearing as sort of an arguing  
24 lawyer, but I was very present to help facilitate things. That  
25 was the title that made the most sense.

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Calamari - Cross

1 Q. Who made the decision to give you the title of general  
2 counsel at PRES?

3 A. I don't recall, but I assume it must have been in  
4 connection with conversations with Mr. Garg and/or  
5 Mr. Visweswaran.

6 Q. So, is it fair to say in 2014, PRES believed it was owed an  
7 incentive fee?

8 A. Yes.

9 Q. And this goes to the questions that I was just asking you,  
10 but at this point, when PRES believed it was owed an incentive  
11 fee, were you employed by PRES as general counsel?

12 A. When you say employed by, I don't know I was ever employed  
13 by them. I was not a W-2 employee of them.

14 Can you repeat the question?

15 Q. Sure. I'm happy to rephrase. At this point when PRES  
16 comes to believe it's owed an incentive fee, were you PRES'  
17 general counsel?

18 A. Yes.

19 Q. And to try and understand the basis of PRES' belief it was  
20 owed an incentive fee. Was there a record that showed that a  
21 particular CUSIPs had a recovery in excess of 500,000 such that  
22 PRES would be entitled to an incentive fee?

23 A. Are you asking me if there was a record of that? Yes.

24 Q. And who maintained this record?

25 A. I don't recall specifically. It would have been someone at

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Calamari - Cross

1 either PRES or PAM.

2 Q. Do you recall how this record was maintained?

3 A. I believe it was in a spreadsheet.

4 Q. Did you ever see this spreadsheet?

5 A. Yes.

6 Q. When did you see it?

7 A. I'm not exactly sure if it was a singular spreadsheet or a  
8 number of spreadsheets, but I would have seen it numerous times  
9 during my work with both PRES and my work with TAM.

10 Q. What information was reflected on the spreadsheet?

11 A. CUSIP numbers and work being -- and references to work  
12 being done.

13 Q. As we talk about this belief by Phoenix that it's entitled  
14 to a recovery fee. Is Phoenix entitled to an incentive fee  
15 after recovery in excess of a certain amount, or is the measure  
16 of when Phoenix is entitled to an incentive fee after the  
17 trusts were made whole on any losses associated with a  
18 particular CUSIP?

19 A. I believe it was recoveries of a certain amount.

20 Q. Do you recall what these certain amounts, the threshold  
21 that had been had to be met?

22 A. It was \$500,000.

23 Q. So at this point PRES believed it had earned an incentive  
24 fee, and you testified in your direct there were discussions  
25 about how PRES' incentive fee would be paid, is that correct?

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Calamari - Cross

1 A. Yes.

2 Q. Were you involved in those discussions?

3 A. Can you repeat the question?

4 Q. Sure. Were you involved in those discussions?

5 A. Yes.

6 Q. Were you involved as counsel to PRES?

7 A. Yes.

8 Q. As counsel to PRES, you were representing PRES' interests,  
9 correct?

10 A. Yes.

11 Q. So your goal in these discussions was to make sure that  
12 PRES got paid, correct?

13 A. That was one of the goals, yes.

14 Q. When you were having these discussions, were there any  
15 discussions of payments outside of the waterfall that had been  
16 made as of August 2014?

17 A. That -- are you asking if they were referencing payments  
18 that had previously been made outside of the waterfall?

19 Q. Yes.

20 A. No.

21 Q. I'll let you answer. I want to make sure the record is  
22 clear.

23 A. I don't believe any payments had been made outside of the  
24 waterfall prior to that, no.

25 Q. So, if no payments had been made outside of the priority of

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Calamari - Cross

1 payments waterfall as of August 2014, what was the concern with  
2 continuing to pay PRES under the priority of payments  
3 waterfall?

4 A. I don't know that there was a concern about continuing to  
5 pay it out under there. There was a belief that it should come  
6 out of litigation recoveries.

7 Q. And where did that belief come from?

8 A. It was something that was being said by all of the parties  
9 involved at the time. Those parties being PRES on the one  
10 hand, and both TAM, and by that point it would have been TAM  
11 and both ICP, and the ICP's counsel, Schulte Roth at the time.

12 Q. So what was the basis for PRES' belief that payments should  
13 be made outside the waterfall?

14 A. I don't know about the basis of its belief. But, wished to  
15 be paid out of the recoveries because those funds were  
16 available, and it wished to be paid.

17 Q. When you say those funds were available, what do you mean  
18 by that?

19 A. It means there was a large recovery that had come in, and a  
20 large amount of fees that were due as a result of that. And so  
21 PRES wanted to be paid out of those available fees.

22 Q. When you say that ICP was involved in the discussions, was  
23 this Mr. Priore at ICP?

24 A. Yes.

25 Q. Did he share PRES' belief that PRES should be paid from

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Calamari - Cross

1 this large recovery?

2 A. Yes.

3 Q. And Mr. Priore believed that the payments should be outside  
4 the waterfall?

5 A. Yes.

6 Q. Let's talk about now what we've been calling the  
7 clarification letters in this litigation. If you could turn to  
8 tab 4 of your binder. That's a document marked Exhibit 13  
9 which is already been entered into evidence.

10 Have you seen this document before?

11 A. Yes.

12 Q. What is this document?

13 A. This is a letter that I wrote to Mr. Nissenbaum at Schulte  
14 Roth.

15 Q. And you drafted this letter, correct?

16 A. Yes.

17 Q. We see here in I guess the first line of the recipient  
18 field just below the date, this refers to 06-1, right?

19 A. Yes.

20 Q. Is it your understanding there are substantially identical  
21 letters for 06-2 and 07-1?

22 A. Yes.

23 Q. Is it okay when I refer to the letters in plural to refer  
24 to all three letters?

25 A. Yes.

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Calamari - Cross

1 Q. If we look down at the signature block, you signed this  
2 letter as general counsel of PRES, correct?

3 A. Yes.

4 Q. And you in fact had drafted this letter, right?

5 A. Yes.

6 Q. Are the clarification letters countersigned by any party?

7 A. No.

8 Q. Did you send the clarification letters to the trustee?

9 A. No.

10 Q. In connection with the discussions that we had just talked  
11 about, about the payment of PRES' large incentive fee, it's  
12 true you went back and reviewed the engagement letter between  
13 PRES and the collateral manager, correct?

14 A. Yes.

15 Q. Did you review any other documents entered into by  
16 Mr. Priore in or around the date of the engagement agreements?

17 A. Not that I can recall.

18 Q. So, as we look at the clarification letter, if we look down  
19 at the second paragraph, the first line, the letter references  
20 the intent of the parties at the time the agreement was  
21 negotiated and executed. Do you see that?

22 A. Yes.

23 Q. And the reference to the capital A agreement, that's to the  
24 engagement agreement?

25 A. Yes.

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Calamari - Cross

1 Q. In fact, you weren't present when the engagement agreement  
2 was negotiated and executed, correct?

3 A. No.

4 Q. Let's look at the fees that have been paid outside of the  
5 waterfall. If you could turn to tab 5 of your binder. This is  
6 Exhibit 40 which is already in evidence in this trial. Have  
7 you seen this document before?

8 A. Yes.

9 Q. What is this document?

10 A. This is the response to a set of interrogatories.

11 Q. Were you involved with preparing this response to the  
12 interrogatories?

13 A. Yes.

14 THE COURT: This particular copy seems to have some  
15 highlighting on it. I take it that was not part of the  
16 interrogatory answers as served.

17 MS. BEAUMONT: Your Honor, I believe that that  
18 redaction was put on there because --

19 THE COURT: That's a redaction.

20 MS. BEAUMONT: Yes.

21 THE COURT: Not a highlight.

22 MS. BEAUMONT: It was proposed redactions. I believe,  
23 if I recall correctly, and someone can correct me if I get this  
24 wrong, one of the parties wanted to be able to show the  
25 responses to a person who was not within the attorneys' eyes



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1 only identification.

2 THE COURT: What I took to be highlighting, which was  
3 not on the original interrogatory answers, is on there for the  
4 purpose of honoring the attorneys' eyes only designation.

5 MR. LORENZO: And your Honor, candidly, what I thought  
6 you were going to point to, if you flip to page 9, for some  
7 reason this version with the redactions didn't have a signature  
8 but as I see we are --

9 THE COURT: Hadn't gotten that far yet.

10 MR. LORENZO: We will have tomorrow morning the signed  
11 version which is also I believe an exhibit that's been  
12 admitted.

13 THE COURT: That's fine.

14 Q. So as we flip through the interrogatories, and if we look  
15 to pages 4, 5 and 6, do you see there a chart on those pages  
16 that is introduced by the following amounts have been disbursed  
17 from accounts held or controlled by the law firm Miller &  
18 Wrubel P.C.?

19 A. Yes.

20 Q. Then above that, there is a chart that is introduced by the  
21 following amounts have been disbursed to the Triaxx CDOs by the  
22 account held or control by the law firm Miller & Wrubel P.C.  
23 There are three entries there, one for each of the CDOs?

24 A. Yes.

25 Q. Is it your understanding that the amounts in the charts are

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Calamari - Cross

1 the amounts of the recoveries that were obtained from the  
2 activist implementation strategy on February 25, 2019?

3 A. I believe those are the amounts that were disbursed to the  
4 Triaxx CDOs.

5 Q. I am looking at I guess all of the information in the two  
6 charts on page 4, and then the chart that continues on to 5 and  
7 6. So, this reflects all disbursements of recoveries outside  
8 the waterfall from the activist implementation strategy as of  
9 the date of this document, which I believe is February 25,  
10 2019?

11 THE COURT: As of the date of the interrogatories  
12 response you mean?

13 MR. LORENZO: Yes.

14 A. That's my understanding.

15 Q. So, flipping to page 3, this chart on page 3, is it your  
16 understanding that these are the amounts of the recoveries?

17 A. As of this date, yes.

18 Q. And the first entry in this chart on page 3 is for  
19 October 21, 2014, correct?

20 A. Yes.

21 Q. And are you aware of any recoveries before that date?

22 A. No.

23 Q. So then as we flip back to page 4, and looking at the  
24 second chart starting about a third of the way down on page 4.  
25 I'll direct your attention to the third entry in that chart,

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1 which is dated 11/25/14. And the payee is identified as ARAM  
2 Phoenix Real Estate Solutions Limited. That's PRES, correct?

3 A. Yes.

4 Q. And that payment to PRES was \$11,750,000?

5 A. Yes.

6 Q. Are you aware of any payments to PRES outside of the  
7 waterfall before this date?

8 A. No.

9 Q. So it's safe to say there in fact hadn't been any payments  
10 to Phoenix outside of the waterfall prior to August 2014, is  
11 that correct?

12 A. Yes.

13 Q. So as we flip back to the clarification letters, the  
14 purported clarification in those letters regarding PRES'  
15 incentive fees, that was not based on past conduct, correct?

16 A. I'm still flipping.

17 Q. Flipping to Exhibit 13, which is tab 4.

18 A. Can you repeat your question.

19 Q. Sure. Is it your understanding that the clarification  
20 letters purport to indicate that PRES' incentive fees could be  
21 paid outside of the waterfall?

22 A. Yes.

23 Q. And what I was trying to get to is that purported  
24 clarification is not based on past conduct, because no payments  
25 had been made to PRES outside of the waterfall as of August 8,

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1 2014, correct?

2 A. It was not based on any prior payments outside the  
3 waterfall.

4 Q. Similarly, it wasn't based on others being aware there had  
5 been payments outside the waterfall, correct?

6 A. Who are the others?

7 Q. I think you had testified you had had discussions with  
8 others about the payment of Phoenix's fees outside of the  
9 waterfall?

10 A. In connection with these clarification letters? That would  
11 have been Mr. Garg, Mr. Priore, and Mr. Nissenbaum.

12 Q. Those individuals did not have an understanding that  
13 Phoenix or PRES had been paid outside of the waterfall prior to  
14 August 8th, 2014, correct?

15 A. Correct.

16 MR. LORENZO: Your Honor, mindful of the time as I  
17 flip through my outline and go to a new section, I didn't know  
18 if now would be a good time to break.

19 THE COURT: Now would be a fine time to break. It is  
20 4:30 exactly. So we will excuse Mr. Calamari.

21 Mr. Calamari, you are due back here at 9:30 tomorrow  
22 morning. You will remain under oath. And between now and  
23 then, you are not to discuss your testimony or facts underlying  
24 your testimony with your counsel or with others.

25 THE WITNESS: I understand.

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1 THE COURT: You may be excused. Lawyers stay behind  
2 for a moment, please, and we'll talk scheduling.

3 (Witness temporarily excused)

4 THE COURT: You'll have to tell me. What's your  
5 estimate, Mr. Lorenzo, for your cross?

6 MR. LORENZO: So, I think we have maybe an hour and 20  
7 minutes left, your Honor.

8 THE COURT: All right. And who will be up after you?

9 MR. SAVLA: I think it will be PIMCO and I am going to  
10 estimate about an hour.

11 THE COURT: Okay. Issuers?

12 MR. LEDLEY: Your Honor, I anticipate five to 10  
13 minutes, but it may be that shrinks down to zero depending on  
14 the other questioning.

15 THE COURT: So we're at roughly an hour and a half.  
16 And Ms. Beaumont, I expect you'll have at least some limited  
17 redirect.

18 MS. BEAUMONT: I imagine there might be a question or  
19 two.

20 THE COURT: Okay. So, it looks like --

21 MR. LORENZO: Your Honor, I just -- I don't know if  
22 you heard. As I was two and a half hours. I imagine that I  
23 would have an hour and 20 left.

24 THE COURT: You're right. It's too late in the day  
25 for me to do math. So we are at two and a half hours, which is

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1 going to be most of the morning. Perhaps we can get our next  
2 witness started before lunch. But, we'll have to see how it  
3 goes.

4 I can't recall who is next. Is it Dr. Tang or is it  
5 Mr. Jonsson?

6 MS. BEAUMONT: I believe it's Mr. Jonsson, your Honor.

7 THE COURT: Okay. So, Ms. Beaumont, you'll have him  
8 ready in the late morning.

9 MS. BEAUMONT: Yes, we will.

10 THE COURT: Okay. Now, how does it look for getting  
11 through both Mr. Jonsson and Dr. Tang essentially in the  
12 afternoon tomorrow? Sounds like that might be a little tight.  
13 Have you talked with each other about what you think the  
14 aggregate time on the stand is likely to be for these two  
15 witnesses? I understand they are going to cover much of the  
16 same ground, right? Or could conceivably cover much of the  
17 same ground, I don't know what you plan to do with them.

18 I am trying to figure out whether we are going to get  
19 Ms. Beaumont on and off the stand Friday morning so we can have  
20 closing arguments Friday afternoon.

21 MR. LORENZO: Working backwards, so your Honor had  
22 directed the parties to discuss --

23 THE COURT: I did.

24 MR. LORENZO: -- the possibility of having closings at  
25 a later date. And everybody can jump in but I think people are

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1 open to that idea, especially given sort of the volume of data  
2 or volume of testimony that is coming in through designations  
3 of depositions. And so aggregating all that data or  
4 testimony -- I'm sorry, it's late in the day for me as well,  
5 your Honor. But obviously that's subject to your Honor's  
6 preference, but also your Honor's schedule.

7 And I guess the one other issue that was discussed was  
8 whether your Honor would prefer to have post-hearing briefing,  
9 if any, so that sort of everything can be laid out and we would  
10 come back and have argument.

11 THE COURT: So my original thought, as you know, was  
12 that it would benefit me and quite possibly you as well to have  
13 closing arguments at the close of the trial on Friday  
14 afternoon. I understand you would do that without benefit of  
15 formal post-trial materials, and I would give you an  
16 opportunity to put those in later.

17 In fact, let me just preview that and say I'd like  
18 those in the form of proposed findings of fact and conclusions  
19 of law. Some of you put your pretrial materials in in that  
20 fashion, and I would ask you to simply update them with actual  
21 trial testimony and so forth. Those of you who wrote  
22 statements of the elements, I imagine you won't have too much  
23 trouble turning that into a proposed finding of fact and  
24 conclusion of law.

25 If we put off closing arguments, we are necessarily

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1 going to have to put them off for at least a week, because of  
2 my schedule the following week. So, it occurs to me if we are  
3 going to put off closing arguments, we might want to put them  
4 off for long enough so you do everything at once, your written  
5 post-trial materials and your oral presentations.

6           Would that be the consensus here? And if so, how long  
7 would you need to be ready both to submit the written materials  
8 and to come back and argue to me? Keeping in mind, this is a  
9 serious caution that I'm giving you. I have 300 cases on my  
10 docket. The longer we go between Friday afternoon and when you  
11 come back to argue to me and submit your written materials, the  
12 more I will have forgotten about the live testimony this week.  
13 So you're sort of running that risk.

14           That said, is there a consensus among the agreement  
15 here as how you would like to proceed?

16           MS. BEAUMONT: I think it might make sense for us to  
17 caucus one more time overnight.

18           THE COURT: Right. You can caucus one more time  
19 overnight. Let me give you some sense of my calendar. The  
20 earliest I could have you back for non-contiguous oral argument  
21 would likely be the week of May 1st, possibly the afternoon of  
22 the 3rd, the 4th is out. No, the 4th may not be out. Possibly  
23 during day on the 4th or the week of May 8th where I have a  
24 number of half day openings.

25           Now, if we do that, my guess is that's not going to be



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1 time for you to turn around written materials because it's just  
2 going to take you longer than that to digest the trial  
3 testimony. So if you wanted to put off the oral argument for  
4 long enough to have assembled your written materials, I'm  
5 thinking we should probably go out at least two weeks from  
6 Friday, probably as much as a month from Friday. If we were to  
7 go out a month from Friday, roughly, that would put us into the  
8 last week of May, where I have a fair amount of availability  
9 the week of May 22. I'd like for it not to go beyond the  
10 Memorial Day weekend. Again, because I don't want to forget  
11 what I've heard.

12 So why don't you all talk amongst yourselves,  
13 overnight tonight, and appoint a spokesman if you will or a  
14 spokeswoman, and tell me if there is a consensus tomorrow  
15 morning, what that consensus is and I'll try to work with you  
16 on that.

17 Anything further for this evening? All right. We  
18 will be in recess until 9:30 tomorrow morning.

19 (Adjourned until April 20, 2023, at 9:30 a.m.)  
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22  
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24  
25

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